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OF GERMANY

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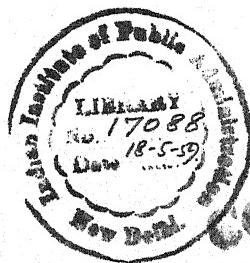
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THE ALLIED  
ITARY GOVERNMENT  
OF  
GERMANY

BY

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THE LONDON INSTITUTE OF WORLD AFFAIRS*

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17088

LONDON  
STEVENS & SONS LIMITED

1947

~~25/-  
pie~~

*First published in 1947 by  
Stevens & Sons Limited  
of 119 & 120 Chancery Lane  
London - Law Publishers  
and printed in Great Britain  
by C. F. Roworth Ltd.  
88 Fetter Lane, E.C.4*

D464X.43

F914

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## P R E F A C E

WELL over two years of Military Government have elapsed. Its main problems and complexities have become apparent, as well as its vital international significance. Before the end of the year, the fateful choice between a world united, or divided into antagonistic blocs, may be made. The development of Germany, under Allied Military Government, cannot but be a vital and particularly critical factor in this decision. This lends increased significance to the forthcoming London Conference of the Foreign Ministers of the four allied Powers.

The present book attempts a critical analysis of the main functions and problems of Military Government. Despite the many admirable discussions of specific problems, in the leading organs of the British and American Press, a comprehensive account and criticism of this extremely complex mechanism is probably impossible without prolonged inside experience.

My association with Military Government lasted for nearly two years, from the beginning of May, 1945 (apart from eighteen months' preparatory work on the administration of Germany, in the Political Intelligence Department of the Foreign Office). It led, from headquarters and field work in the Legal and Economic Divisions of Shaef, to an assignment as adviser on German economic administration to American Military Government, and, from there, to the direction of the German Organisation Branch of the Economic Sub-Commission, in the British Control Com-

mission (later merged in the British-U.S. Bipartite Economic Control Group). Several visits to the French and Russian zones gave me some first-hand, though naturally much more limited knowledge of these two zones, supplemented by many first-hand reports, both official and non-official.

My German background made it easy to make numerous and varied contacts outside the official sphere. I have also lectured at Universities as well as to general audiences and working-class organisations.

It is nevertheless impossible to do full justice to the manifold activities and problems of Military Government in a book of this compass, written for the intelligent student of international affairs. Such a task must be left to future historians who will write with greater distance and fuller documentary material. The present book concentrates on the most critical and acute aspects. Despite the obvious difficulties it covers the four zones. Anything else would fail to bring out the vital inter-allied and international aspects of the problem.

If the book is strongly critical, this is in no way to belittle or disparage the great and sometimes heroic efforts made by many military and civilian administrators of all the allied nations. Despite all the disappointments, one retains the consciousness of values and purposes shared with a large number of both allied colleagues and Germans, above the ravages of the war and the Nazi regime. In this lies one of the few real hopes for the future.

This book aims at the utmost objectivity in criticism; but it is equally necessary to be clear about the values one assumes. Three convictions, above all, underlie the critical part of this book: first, the belief in the need for an international conception of the post-war world and the consequent futility of considering Germany in mental or

physical isolation from international reconstruction; secondly, the conviction that neither disarmament nor denazification nor the restoration of political democracy in Germany are possible without a decisive shift in the social structure of Germany; thirdly, the conviction that Great Britain had, and still has not entirely lost a unique opportunity in Germany, because her general policy of combining political democracy with moderate socialism is not only a solution necessitated by conditions in Germany, but the only one acceptable to a majority of Germans. It is because of the failure of British Military Government, for a variety of reasons, to live up to this opportunity that criticism of various aspects of British Military Government policy is particularly detailed.

The documentary section appended to the text is meant to give a representative selection of the most important official sources. Frequent reference is made to them in the text. Quite apart from restrictions of space, which have limited the selection, no reader of this book need be reminded that the picture of Military Government which emerges from official documents is neither complete nor always accurate.

The responsibility for all facts and opinions put forward in this book is entirely my own.

I have, however, greatly profited from the invaluable advice and criticism of a number of friends, all particularly qualified and experienced in the problems with which this book deals.

Mr. R. A. Chaput de Saintonge, Mr. W. Fliess, Dr. O. Kahn-Freund, Mr. H. J. Klare, Dr. D. Mende, Mr. N. Reddaway and Mr. Duncan Wilson as well as the editors of this series have all read the whole or part of the proofs and made many valuable suggestions.

X  
PREFACE

Finally, I should like to thank both the publishers and the printers for producing this book with the minimum delay possible under present-day conditions. This has enabled me to note developments up to the middle of August.

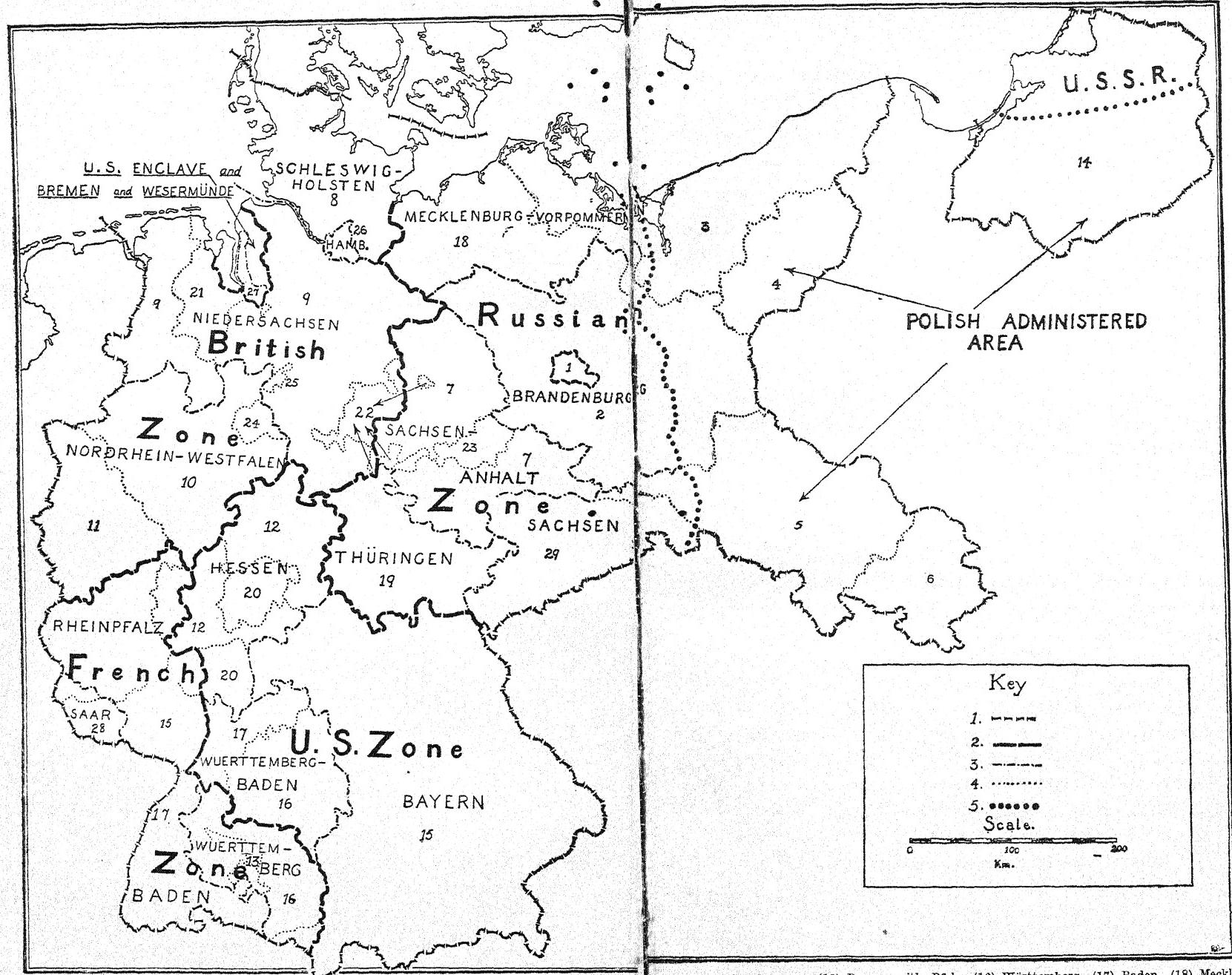
W. FRIEDMANN.

LONDON.

*August, 1947.*

THE MAJOR POLITICAL

DIVISIONS OF GERMANY



1. The boundaries of Germany before 1938.
  2. The boundaries of the Zones of Occupation.
  3. The boundaries of the new Länder as organised in each of the Zones of Occupation.
  4. The boundaries of the German Länder and Prussian Provinces (where not coincident with new Länder boundaries).
  5. Boundary between Russian Zone and Polish Administered Area.
- Numbers indicate Prussian Provinces and the Länder:
- (1) Berlin, (2) Brandenburg, (3) Pommern, (4) Grenzmark, (5) Nieder-

Other Länder are:—(15) Bayern with Pfalz, (16) Württemberg, (17) Baden, (18) Mecklenburg-Schwerin, (19) Thüringen, (20) Hessen, (21) Oldenburg, (22) Braunschweig, (23) Anhalt, (24) Lippe, (25) Schaumburg-Lippe, (26) Hansestadt Hamburg, (27) Hansestadt Bremen, (28) Sachsen, and (29) Saar.

Names indicate the Zones of Occupation and the new Länder as follows:—

*British Zone*:—Schleswig-Holstein, Niedersachsen, Nordrhein-Westfalen, Hamburg.

*U.S. Zone*:—Bayern, Hessen, Württemberg-Baden, Bremen and Wesermünde.

*French Zone*:—Saar, Rheinpfalz, Württemberg, Baden.

*U.S.S.R. Zone*:—Mecklenburg-Vorpommern, Brandenburg, Sachsen-Anhalt, Sachsen, Thüringen.



*PART ONE*  
*THE BACKGROUND*

CHAPTER 1

BACKGROUND AND TASK OF MILITARY GOVERNMENT

MANY historians have analysed the amazing way in which Germany, a conglomerate of many petty and powerless states for so many centuries, rose to the position of the strongest continental power within less than a century. It is neither necessary nor appropriate to repeat this historical outline here. As the war proceeded and the character of the Nazi regime revealed itself more and more openly, it became clear that Germany's power and danger under the Nazi regime rested on a few major factors, each creating a special problem of control.

OVER-CENTRALISATION

Bismarck's new German Reich of 1871 was a federation which had developed from a confederation of North German states. The functions of the Reich were limited to the principles of defence, foreign affairs, customs and legislation on civil and criminal law. Such matters as administration of justice, education, police were entirely a preserve of the federal states. The question which now forms the core of the federal problem in any federal state, namely the degree of economic planning powers vested in the federal government, constituted no major problem at the time of economic liberalism. It would be wrong to say that economic control rested either with the Reich or with the Länder. It was in fact essentially a matter of private enterprise. There was no Reich ministry of economics nor any coherent economic administrations.

The Weimar Constitution of 1919 brought a considerable strengthening of the powers of the Reich and it became more questionable whether Germany could still be described as a federal rather than a unitary state. The Länder remained however, essentially intact and represented through a federal organ, the

Reichsrat, which, although not comparable in power to the former Federal Chamber, the Bundesrat, still had a suspensory veto on legislation passed by Parliament (Reichstag). As compared with the Bismarck Constitution, the powers of the Reich were extended to the entire field of taxation, in which the Reich built up its own administrative machinery, to communications and to the power of giving directives to the Länder. Apart from these fields, the executive apparatus as well as the entire administration of police, internal affairs, judicial administration and education, remained with the Länder. It was not only the preservation of the federal character as such but the existence of parliamentary political democracy and freedom of association which guaranteed diversity and operated against excessive centralisation. One major party in the Reichstag, the Bavarian People's Party, was in fact representative of a specific Land.

The Nazi regime was in all fields determined to concentrate power in a small number of all-powerful groups closely associated with the political leadership of the Nazi Party.

The Nazi regime set out to break the surviving autonomy and the very existence of the Länder in all but name. This was achieved in various stages. The first was the weakening of the unity of Prussia. It is an irony of history that the abolition of Prussia, formally decreed by the Allied Control Council in 1946, was prepared by the Nazi regime though for an entirely different purpose. The Prussian provinces were brought under the direct control of the Reich and the provincial governors (Oberpräsidenten) were put in a position parallel to that of the governors (Reichsstatthalter) in the other Länder. Prussia, as by far the biggest state of Germany, was in fact merged with the Reich.

Of the other seventeen Länder of Germany some were historical survivals and quite unsuitable as modern units of government administration. The major Länder, Bavaria, Württemberg, Baden, Sachsen, remained essentially intact as administrative units, together with the Free City of Hamburg. Land Hessen remained as such but was combined for some administrative purposes with the neighbouring Prussian province of Nassau. The smaller Länder, such as Bremen, Oldenburg, Brunswick, Lippe, were combined with

other units, either Länder or Prussian provinces, under a joint Reich governor. At the same time a new regional conception, the Gau, began to take the place of the older units of provinces and Länder. For the administration of labour and economic affairs, as well as of the administration of the Nazi Party, it increasingly displaced the older units. Yet another type of unit was created in the form of defence districts and economic districts which partly, but not entirely, coincided with either a Land, a province or a Gau.

All this would have led to much confusion had it not been held together by the complete monopoly of the Nazi Party in the administration. The Reich Governors as well as the Gau leaders were taken from among the leaders of the Nazi Party and, even where they were not themselves the chief administrators, they exercised sufficient control over the nominal administrative chief to ensure uniformity.

The net result was that the traditional autonomy of the Länder disappeared. Name and form were retained, together with the colourful but meaningless display of regional autonomy in festivals, folk dances and other demonstrations outside the sphere of politics and administration.

Lastly, certain vital preserves of the Länder were transferred to the Reich. The administration of justice was completely transferred from Länder to the Reich by a statute of 1934. In the fields of education and police, the Reich acquired the substance but not the form of exclusive authority. Police control was in fact vested in Himmler as chief of the S.S. and of the German Police. The Prussian police authorities were entirely merged with those of the Reich, those of the other Länder remained in existence but purely in the function of executive regional authorities. The entire Police acquired the status of Reich officials. Similarly, a new Reich Ministry for Education, which absorbed the former Prussian Ministry, acquired effective authority over education in the whole Reich, but administration remained with the Länder, under the direction of the Reich authorities.

The process of centralisation and unification was completed by the abolition of any party or organisation other than the Nazi organisations. It thus became impossible for any Land to have a

parliament which would express either political or regional opposition to the Reich. There were no more parliaments and the regional Nazi authorities took their orders from the Führer.

In the result, four main factors contributed to destroy almost anything that remained of German federalism and regional autonomy: firstly, the abolition of parliaments and political liberty; secondly, the abolition of the remaining legislative and administrative autonomy of the Länder; thirdly, the formation of new administrative units which gradually replaced the Länder; and fourthly, the all-pervading hierarchy of the Nazi Party, whose functionaries came to occupy all key posts.

This presented allied control with the great and yet unsolved problem of Federalism versus Unitarism, Decentralisation versus Central Government.

#### CONCENTRATION OF ECONOMIC POWER

Under the Republic the Reich and other public authorities had acquired controlling interests in a number of undertakings, notably in the aluminium industry and public utilities. Apart from the newly-established Hermann Goering Iron and Steel Works, the Nazis hardly transferred any new undertakings to direct public control. But Germany did become an intensively planned economy under the Nazi regime. The method chosen was not state socialism, but complete control of the economic life of the nation. The Nazi regime firstly increased direct state administration through rigid control over all essential raw materials and foreign trade. It secondly created a compulsory corporate organisation of all groups of industry and trade organised by functions and entrusted with certain controls of a semi self-governing character on behalf of the State. It thirdly associated the leaders of German industry and business with the Nazi hierarchy. The rather feeble attempts which the Weimar Republic had made to control cartels and excessive concentration of economic powers were reversed, for mass producing big units, especially in heavy industry, are more efficient than small ones. The concentration of heavy industry, especially in the Ruhr and in Upper Silesia, became in fact, more marked than ever. The leaders of heavy industry were in the high councils of

the Nazi regime. Either in that capacity or through the combination of a powerful industrial or business position with that of leader of a compulsory group of industry or business the German economic chiefs preserved the profit-making character of trade and industry, but turned it into an instrument of the Nazi State. The old-fashioned distinction between the public and private economic spheres became meaningless. German big business made bigger profits than ever, and their powers over their employees and workers were immensely strengthened by the destruction of all workers' organisations and collective bargaining. But at the same time industry and trade became agents of State economy plans working for the ends of the Nazi State and linked with the State through the compulsory groups as well as through the all-pervading hierarchy of the Nazi Party.

Organisationally the link between the State and private economic life was mainly effected through two types of economic organisation: the economic chambers (Wirtschaftskammer) which became more and more associated with the Gau and entrusted with the control of raw materials and the execution of economic policy; and the industrial groups (Wirtschaftsgruppen) which represented the different functional organisations of industry and trade and were entrusted with the execution of the production plans of the State; also, certain key industries such as coal, chemical fibres and textiles were combined in super-cartels closely associated with Reich policy.

In the field of food and agriculture, the 'Reich Food Estate,' a corporate organisation, was entirely identified with the state. Organised in regions and districts, it had entire control over production and distribution of food and, apart from compulsory membership of any one engaged in the production or distribution of food, this organisation was armed with strong disciplinary and inspecting powers.

With some variations, this principle of organisation was repeated in every field of economic life, whether labour, transport or communications. It was a system which did not fit into the categories of either socialism or capitalism but which aimed at the utmost

concentration of controlling powers in a few key positions centrally directed from Berlin.

This led to the second and perhaps the most difficult of all problems of military government, the decentralisation of economic controls and the destruction of the power of big industry and business.

#### COMPULSORY MEMBERSHIP OF NAZI ORGANISATIONS

One of the characteristic aspects of a totalitarian regime is the suppression of any political organisation other than the one which embodies the official creed coupled with more or less open pressure to embrace this creed. In Soviet Russia membership of the Communist Party is still considered as a privilege reserved to a minority—though a very considerable one—rather than a condition of effective citizenship. In Nazi Germany membership of either the Nazi Party or of any of its numerous affiliated organisations covering the whole field of public life increasingly became a necessity. Membership of the Nazi Party itself was estimated to be over 7,000,000 in 1943. From having been a privilege of a 'political elite,' membership had become a highly desirable qualification for any higher official post or for advancement in any field, official or non-official. Apart from the party itself, however, a network of other affiliated organisations formed part of the Nazi hierarchy. Some of these were corporate professional organisations equivalent to the compulsory industrial organisations previously described. Such were the associations of technicians, officials, doctors, teachers and lawyers. Membership of these was never made compulsory by law, but it became increasingly compulsory in fact. In the later years of the Nazi regime at least no one could be an official, a doctor, a teacher or a lawyer without belonging to the appropriate organisation. There were secondly a number of organisations, mostly of a semi-military character, membership of which was not compulsory but highly advisable for advancement. Among them were not only the S.S. and the S.A. but such organisations as the National Socialist Students and University Teachers' Organisation. There were finally a large number of much more loosely affiliated organisations, all of them, however, led by trusted Nazi leaders and all to a greater or lesser extent instruments of Nazi policy. Among them were the

- Red Cross, the Association for Germans abroad, and the Servicemen's Associations.

It was characteristic of Nazi tactics, even in the later years, not to make membership of any specific Nazi organisation a general condition of either citizenship or even admission to certain professional callings. Perhaps this state of affairs would have been reached had the Nazi regime survived longer. The method chosen was one of more or less direct pressure. There were innumerable means at the disposal of the authorities for indirect compulsion. A recalcitrant official would be precluded from promotion or be relegated to an obscure office. A business man would find supplies drying up. People of German descent living abroad, even if foreign nationals, would find themselves threatened with reprisals against their families or relatives in Germany.

This state of affairs would make it difficult enough to assess properly the degree of Nazi sympathy of any German citizen in terms of his membership of a Nazi organisation. Matters are made much more difficult still through the difference in the degree of pressure exercised upon different groups of citizens. Generally speaking, people in industry and business, especially if they were in powerful positions, suffered less compulsion than people in official positions or members of the professions. Often enough a substantial donation was considered more valuable than a membership card by the Nazi authorities, but even within the official organisations the degree of pressure varied considerably. In the twelve years of its existence, the Nazi regime despite all its ruthlessness, had not yet time to consolidate its power equally in all spheres. It could not, for example, dispense with the bulk of trained judges and civil servants all at once. While every effort was made to train the new generation in Nazi principles and give it all possible advantages, many senior civil servants and judges had to be retained. Many of those, while loyal and trained to serve any government, resisted membership of the Nazi Party or, as far as humanly possible, even of its affiliated organisations. Much depended therefore on the personality of the chief. For example, the Permanent Secretary of the Reich Ministry of Finance, Reinhardt, exercised the strongest pressure upon all the officials of the Ministry to join the Nazi Party, while the officials of the Reich Ministry of Economics who in the

early years had less enthusiastic Nazis such as Schmitt and Schacht as ministers had considerably more freedom. Again, the Association of Prussian Judges decided as early as 1933 to dissolve itself and to recommend to all its members that they should join the Nazi Party. A considerable number of Germans joined the Party or another Nazi organisation with the deliberate purpose of either protecting their associates or even of working against the regime. Many partnerships of lawyers, for example, were between Jews and non-Jews. Often the non-Jew would join the Nazi Party in order to protect his Jewish partner (while this was still possible). In other cases, out of three or four partners, one would join the Party as the minimum concession necessary. The armed forces, which preserved a considerable degree of administrative independence at the price of giving their full support to the military plans of the Nazi regime, were, until the last years of the regime, not even allowed to join the Nazi Party.

All this adds up to a pattern of almost unbelievable complexity. It might be said with justification that almost everyone in any position of responsibility or dependent upon advancement was increasingly compelled, as the years proceeded, to profess some association with the Nazi Party or one of its affiliated organisations. But, except for high functionaries, mere membership of a Nazi organisation was an extremely unreliable test of Nazi sympathies. A multitude of factors, such as the type of activity, the sympathies of the chief, the desire to cover others, the degree of economic independence, did not indeed detract from the general pattern of the Nazi regime, which was one of forcing the entire population under one faith, but it makes the assessment of the individual extremely difficult.

This has produced the problem which has baffled the allied authorities more than any other: the problem of denazification, that is the problem of how to punish or put at a disadvantage those who had profited from their association with the Nazi regime while assisting those who had suffered through their non-association or active resistance.

#### DESTRUCTION OF POLITICAL LIBERTY

One of the first and the most thorough going measures of the Nazi

regime was the suppression of political liberty in all its aspects, including the freedom of the press. Within a year the Nazis had abolished all political parties and replaced them by the officially sponsored Nazi Party. They had abolished all distinctions between legislative executive and judiciary; firstly by turning the Reichstag from the sovereign legislature into an occasional parade meeting which automatically acclaimed certain actions of the Government; secondly, by merging the office of the Reichspräsident as the constitutional head of the State with that of the Führer; thirdly by amalgamating the functions of legislation and administration in one body, the Cabinet, which in turn owed allegiance to Hitler; fourthly, by destroying judicial independence<sup>1</sup> in all but name.

Beyond the destruction of the parliamentary system and the other essentials of a democratic system of government, the Nazi regime abolished freedom of association in all its aspects. Every association, whether in name public, private or semi-public, became directly or indirectly a part of the Nazi State.<sup>2</sup> Any form of free association became impossible. Particular attention was directed to the complete destruction of organisations which could in any way perpetuate an element of collective resistance to the regime. Foremost among these were the trade unions and the consumers' co-operatives. The trade unions were dissolved and every employee and worker was compelled to join the official Nazi Organisation of Labour, the Deutsche Arbeits Front. They were turned into 'followers' owing allegiance to owner or manager appointed 'leader' of the undertaking by the Labour Law of 1938. The elected works' councils were replaced by nominated workers' trustees who, more often than not, were specially selected by the Nazi hierarchy. By this double allegiance to the management of the firm and to the official Nazi Labour Organisation, the individual employee and worker, while guaranteed security of employment, was made powerless to associate with fellow workers. Collective bargaining by the organisations of employers and employees was replaced by official arbitration through regional Reich trustees of labour. The consumers' co-operatives, a democratic movement

<sup>1</sup> On the last aspect see further below, p. 169 *et seq.*

<sup>2</sup> This has already been described for the organisation of Industry and Agriculture.

affiliated to the International Co-operative Movement, were dissolved. The property both of trades unions and of consumers' co-operatives was transferred to the Deutsche Arbeits Front.

#### DESTRUCTION OF THE RULE OF LAW

The Weimar Republic had confirmed the principle of the independence of the judiciary through guarantees of irremovability. The independence of the judicial function was specifically proclaimed in the Constitution and jealously guarded. As the Republic had failed to change all but a small proportion of the judicial personnel of the Imperial regime, this protection was used by the judiciary to sabotage quite a few legislative measures of the Republic, under the guise of judicial independence. In particular the judges claimed for themselves the right to examine the constitutionality of Acts passed by Parliament (Acts purporting to change the constitution had to be passed by a two-thirds majority). Not only did the Nazi regime not mean to tolerate any such indirect control function of the judiciary, it was determined to make the judicial function entirely subservient to state policy. This end was achieved through a series of parallel measures: firstly, the guarantee against removing a judge to another post was abolished, and recalcitrant judges were relegated to insignificant positions. Needless to say they were not promoted. Secondly, new judges were chosen from politically reliable trainees and given rapid advancement. Thirdly, the Ministry of Justice, which was formerly confined to administrative supervision, proceeded to issue circulars to the courts directing their attention to policy as desired by the government and criticising decisions incompatible with Nazi ideology. Fourthly, special tribunals were instituted for an increasing number of offences of a political character. This removed a large sphere of offences from the jurisdiction of the ordinary criminal courts into courts composed of strong Nazis. Fifthly, the Gestapo acquired an increasing and completely uncontrolled power of either side-tracking or sabotaging judicial decisions. Many people, instead of being tried, were put into concentration camps or special Gestapo prisons without any trial whatever and for an indefinite period. Others, such as Niemoller, were put into concentration camp immediately after

having been acquitted by the ordinary criminal court. Sixthly, administrative tribunals, entrusted with the function of judicially controlling unlawful administrative action against the citizen, were largely though not entirely abolished. Seventhly, a new statute enabled judges to convict without any specific legal provision, where they considered such convictions in accordance 'with the healthy instinct of the people.'

The result was, as in other fields, an odd mixture of survival of legal forms coupled with the destruction of the substance of legal impartiality. The ordinary courts continued to function to some degree and the older generation of judges preserved the old principles to some extent; but the judicial function became more and more meaningless or an adjunct of state policy.

This fact was perhaps more noticeable to the average citizen than any other aspect of the Nazi regime. While he complied with the requirements of the regime he was reasonably safe in his daily life, but all guarantees of personal security disappeared. Legal decisions came to depend more and more upon the status of the party (Jew or Gentile, Party member or political suspect) than on questions of justice. The problem of restoring what is commonly described as the rule of law therefore became another permanent problem of military government.

#### PERVERSION OF MORAL VALUES

The characteristics of the Nazi regime hitherto described are relatively specific and easy of definition. Beyond that a general perversion of moral values as hitherto accepted by western civilisation was the permanent and all pervading objective of the Nazi regime. The following aspects may perhaps be singled out as of particular and destructive significance: the cult of obedience was increased beyond all limits. Thoughtful students of Germany have almost invariably noticed the strange and dubious distinction between individual and collective morality frequent among Germans. The weakness of the latter is largely connected with the belief in authority which the Nazi regime raised from a matter of discipline to a matter of quasi-religion. To obey the leader was not only the duty of the citizen but the fulfilment of a faith. Together with

this went scorn for any Christian and humanitarian values, which were regarded as impediments to the absolute devotion to the Nazi State, and a systematic cult of race superiority. In order to achieve the objects of the Nazi State fully, it was essential to feel as a member of a superior race. This was not necessary so much for the average citizen, whose main duty was to obey, but for the chosen instruments of Nazi policy such as the higher party functionaries of the S.S. It was they who were also specifically trained in what is undoubtedly the most sinister and criminal of all teachings of the Nazi State: the development of cruelty, not as a passion or an instinctive reaction, but as a science. In order to systematically exterminate some 5,000,000 Jews and a scarcely smaller number of members of the Slavonic races and hundreds of thousands of political opponents whether German or foreign, it was necessary to detach cruelty from all passions, to make it a matter of careful calculation. Nothing has baffled Allied Military Government more than the discovery of thousands of Nazi functionaries who were affectionate fathers and husbands, kindly to children and yet bestial beyond description towards others in execution of their official duty. This dual morality was the result of absolute obedience coupled with a complete divorce between state morality and individual morality.

These are but the salient aspects of a philosophy which permeated all aspects of public and private life. Its all-pervading character makes the problem of 're-education' the most elusive of all problems of military government.

## CHAPTER 2

### DIVERGENCES BETWEEN PLANS AND REALITY

It has often been said that General Staffs prepare not for the next but for the last war. This is to some extent true of the comprehensive plans made for the military government of Germany. It is difficult to say what was in the mind of the Soviet Authorities which had not been associated with the peace-making after the first world war. The French, on the other hand, became a full partner in the occupation only at a very late stage of the war. But the American and British authorities, with which the French were originally associated through SHAEF, prepared the military occupation of Germany thoroughly for nearly two years preceding the end of the war, as part of the operations of SHAEF, the combined Anglo-American command under General Eisenhower. Teams of specialist military government officers were trained to move into the occupied regions of Germany immediately after their capitulation. The functional military government organisation of SHAEF formed the basis for the organisation of the British and U.S. Control Commissions which were to take over the long term control of Germany.

In the case of Germany, as she was in May, 1945, the ordinary problems of military occupation were however increased a hundred-fold. There was no parallel in history for the administration of a country which was highly developed in a technical, economic and administrative sense, yet utterly prostrate and disorganised. There was also no precedent for the joint control of such a country by four allies whose outlook and methods differed fundamentally. It was a novel and unique problem to combine the immediate tasks of military occupation with the rooting out of a system which had permeated every sphere of life, public and private. //

Three major lessons of the abortive occupation and control of parts of Western Germany after the first world war haunted the allies. The first was the ineffectiveness of an allied control and inspection machinery loosely superimposed upon an intact German government and administrative structure. The Control Commissions had been at an increasing disadvantage against that machinery, unable to check effectively on disarmament, industrial

development, the concealment of documents, the accuracy of statistics, etc. The second was the ineffectiveness of control over a German official apparatus limited to a part of Western Germany while the central government continued to be run uncontrolled from Berlin, and the officials naturally took their clues from their superiors at the centre rather than from their local allied controllers. The third was the terrible and costly experience of the rapid and astonishing recovery of Germany, defeated but substantially intact, despite an apparently crushing burden of reparations and a thorough-going destruction of war material. It had in fact turned out that the destruction of stores, the handing over of fleets and similar measures designed to weaken Germany in her military and industrial potential, had only led to the introduction of more modern methods and the replacement of obsolete by up-to-date material.<sup>1</sup>

( From the recognition of these three fallacies sprang three co-ordinated plans: one was to control Germany in her entirety from the centre. The attack was to be on the heart of the octopus, not on one of its tentacles. Closely related was the plan to make the extent and possibility of inspection not dependent upon a more or less amenable German administrative system and civil service but to make control, especially industrial control, absolute and unconditional. Lastly, Germany's industrial potential was to be reduced to proportions disabling her from developing once more into a major aggressor under conditions of modern warfare. It was in respect of this third plan that the memories of the first world war overshadowed the realities of the second.

( While allied control was to be from the centre downwards, comprising the whole of Germany and covering every sphere of public life, the assumption, in the preparation of the plans, was throughout that the function of the allies would be control, not direct government, and that a German administration, replacing the Nazi government, would run the German state under allied orders. It was also thought that joint control by the four major allies in Berlin would be more effective than it proved to be, and that zonal subdivisions would mainly have administrative and military significance. It is true that the Yalta Conference, in February, 1945, includes the

<sup>1</sup> The process was of course hastened by the eagerness of allied investors, from 1925 onwards, to invest their stagnant money in loans to German public authorities and private industry, which enabled Germany to re-equip herself largely with allied resources.

'dismemberment of Germany' among allied objectives. But the Potsdam Agreement, a few months later, again assumes economic and, at least, partly administrative unity. This has remained the directive up to the present.

The third assumption—here again the memory of the previous war overshadowed the present one—was that Germany would surrender at her frontiers, rather than have Germany herself destroyed. President Roosevelt specifically stated this belief in an interview in 1944.

All these assumptions were shattered during the last nine months of the war, after the failure of the German revolt of July 20, 1944; the last major hope of a German anti-Nazi government overthrowing the Nazi government and terminating the war faded. The policy of 'unconditional surrender,' agreed in January, 1943, was influenced by the desire not to give Germany another opportunity of appealing to world conscience, as she had done after the first world war by invoking Wilson's Fourteen Points and the Treaty of Versailles. But this new formula made the formation of an alternative German government more difficult. Next, it became increasingly clear that the allies were not working out their plans jointly but separately, and even in ignorance of each other's intentions. Anglo-American unity and combined operations survived until the dissolution of SHAEF in July, 1945, generally ascribed to Russian pressure. The French formed part of the SHAEF command but, from the beginning, took a very independent line in regard to the administration of the German occupation zone allotted to them. As between the Western allies and the Soviet Command, the link was practically nil. It was, in fact, only several months after the capitulation that the first British and American forces could enter Berlin, which had until then been treated as part of the Russian zone of occupation. In the meantime vital problems of military government had to be solved and the tragic division of Germany into four separate occupational zones had already developed. (Thus there was, at the most critical moment, neither a German government nor a joint allied control.)

While SHAEF officers and the Control Commission had been trained in the intricacies of German administration, and while plans for the de-industrialisation of Germany, resulting in the so-called Level of Industry plan of 1946, took shape, the military events of

the last nine months of the war created a completely different situation, through the unprecedented destruction of German cities, industries and transport. Moreover, the allied leaders, thinking too much of former militarist German governments, had misjudged the complete nihilism of the Nazi leaders, their absolute indifference to the fate of their own country and people, once their own plans were frustrated and their regime doomed to collapse. They proceeded to fight on long beyond any reasonable hope of successful resistance and at the cost of utter ruin. Last-minute resistance to Nazi orders, by some military commanders and others, saved some medium towns and a few bridges. The Germany of which the allies took complete and final control on May 8, 1945, was a country entirely different from that emerging from the 1914-18 war.

Instead of controlling and overhauling a German administrative apparatus in functioning order, the military government teams had to build up the rudiments of administration from the bottom. Instead of finding an intact country, with the bulk of its industrial equipment and its cities standing, its farms in working order, its transport system operating, military government officers found a completely paralysed country, so that their primary task was that of re-establishing the most elementary necessities of life. Instead of sanctioning the orders of mayors, railway executives or food distributors, military government officers had to get Bailey bridges built, power stations restored, seed potatoes carried from Hanover to the Rhineland. Military government officers knew soon enough that the problem was not that of keeping down a Germany bursting with vitality and potential productivity, but of keeping her barely alive under conditions of unparalleled chaos. Yet the high level plans did not materially alter, although the new situation became increasingly apparent during the latter part of 1944. The American and British military government teams met the task of restoring public utilities and getting some life going again with astonishing ingenuity, enthusiasm and success.<sup>2</sup>

<sup>2</sup> I well remember, for example, the desperate and successful efforts made at regional military government headquarters in Westphalia (May, 1945) for the provision of seed potatoes for Westphalia which had always received them from East Prussia. In those days the complex Control Commission machinery did not yet exist, and even SHAEF headquarters had but the loosest contact with military government in the field. The potatoes did arrive.

For the first few months at any rate the problem of how to keep down renascent industrial activity did not worry military government. Amidst all the destruction and chaos, they could apply to their task the natural instinct of building up from ruins rather than organising and cataloguing restrictions.

(Military government was much less prepared for the second unexpected task, that of finding new German administrators in a complete vacuum.) The major Nazi leaders of course had vanished, nor would it have been much of a problem to eliminate from office the major Nazi functionaries. But the entire administrative apparatus had disintegrated during the last few months. All official files, together with the staff, had been evacuated from administrative and industrial centres to small rural areas where they were either destroyed by the retreating Nazis or discovered after many searches. Some of the staff had remained with the files, others had dispersed. Meanwhile military government officers were not only faced with the problem of sacking officials and other functionaries because of their Nazi affiliations; they were above all faced with the problem of finding new administrators, and for this they had very little guidance. Inclinations, prejudices and fancies, sometimes pure accident, played a big part in early appointments.

In more than one case the commanding officer entering a town would ask the first apparently innocuous citizen he met in the street to assume the office of mayor. Any person with a tolerable fluency of English had a particularly good chance of obtaining office. The whole baffling problem of denazification coupled with the even greater constructive problem of finding the nucleus of the new German administration began to confront military government, owing to the unexpected absence of any organised apparatus, as the allies had found it after the first world war.

It became increasingly clear during the first few months of occupation that the most fundamental of all assumptions had vanished: that of a joint allied control machinery for the whole of Germany. Gradually military occupation districts crystallised into allied occupation zones increasingly distinct in terms of government, economics, transport, political and social development. As the occupation zones were defined, a number of adjustments and

exchanges took place. Thus, parts of the Rhineland, Thuringia and Saxony, Wurtemberg and Baden, which later became parts of the British, Russian and French zones, were originally occupied and administered by the Americans. Unfortunately, certain accidents of military occupation survived the final allotment of occupation zones. To the first disaster of a Germany administered not jointly but in four separate zones was added the second disaster of a delimitation of zones not determined by any political, economic or administrative principles, but by the accidents of military occupation. A more detailed analysis of the zones will be given below.<sup>3</sup>

The hardening of occupational boundaries into final administrative zones created a host of problems unforeseen in the preparation of plans. First, the zones had now to be envisaged as separate economic units. This would have been a major upheaval even if the zones had been chosen according to economic principles, in view of the close economic integration of Germany.<sup>4</sup> The actual division of the zones increased the problem a hundredfold. It left the British zone with the greatest concentration of heavy industry in Continental Europe, a population largely concentrated in a number of once flourishing industrial cities now more or less completely destroyed, and on the other hand, a severe deficiency in agricultural production. None of the other occupation zones was equally unbalanced but none approached self-sufficiency. The problem was further complicated by the *de facto* cession of the largest agricultural area of Germany to Poland, as agreed at Potsdam.

The division into occupation zones was greatly complicated by the immense problem of mass expulsion of Germans from the areas occupied by Poland, the Sudetenland of Czechoslovakia and from Hungary and Yugoslavia. The Control Council plan of November, 1945, provided for the compulsory evacuation of 6,500,000 people, mostly old people, women and children<sup>5</sup>; to these must be added many who fled with the German armies. Their distribution would have been a staggering problem even given unity

<sup>3</sup> See below, pp. 70—76, in particular on the border between the French and U.S. zones.

<sup>4</sup> See below, p. 189 *et seq.*

<sup>5</sup> The Czechs, after a while, felt the loss of hundreds of thousands of skilled craftsmen and farmers. They then proceeded to retain the men, but continued to expel their families!

of the remnants of Germany. Their absorption by the zones separately became a problem incapable of solution. The British zone, burdened with a population of over 20,000,000 people, living mostly in destroyed cities, had to absorb some 2,500,000 of these refugees.

Another direct consequence of the absence of any working German machinery of administration and industry was the creation of a control commission staff which to-day presents a formidable legacy. The establishment of a British Control Commission came to be fixed at some 26,000, of whom about one-fifth were to control trade and industry. A system was created which aimed at the control of German industry almost factory by factory and represented a halfway house between the direct running of Germany's economic life and its supervisory control.

Finally, a psychological factor of fundamental importance must not be overlooked. (The occupation of Germany occurred at a moment when the allies were psychologically singularly ill-prepared. Much of this was due to the criminal prolongation of the war by the Nazi leaders and by the full revelation of German mass atrocities; much of it to the sheer length of the war and the weariness caused by it. Throughout the greater part of the war a sane attitude had prevailed, particularly in Great Britain. It was recognised that the German people had to bear the full consequences of a war exceeding in criminality and the scope of destruction anything known in history. But despite Lord Vansittart's *Black Record* it was realised that, for the sake of peace and international reconstruction as well as in justice to the considerable section of Germans opposing the Nazi regime, a differentiation had to be made, that not all Germans could be treated as criminals, that it was essential to give Germany a constructive and peaceful purpose from the start.) But in the last phase of the war, and especially after the failure of the putsch of July 20, 1944, passions became more intense. For many, 'unconditional surrender' became identified with indiscriminate condemnation of all Germans, especially after the discovery of Belsen and other Nazi atrocities. The vital distinction between collective responsibility and collective guilt was ignored. The Americans, with one of their characteristic radical swings from one

extreme to another, adopted the Morgenthau policy, which expressed its undisguised purpose of wholesale revenge upon Germany in the policy of complete de-industrialisation. While this policy was never fully adopted it had considerable influence upon American policy in the later stages of the war and during the first phase of military government. Exponents of the Morgenthau policy occupied powerful positions in military government until the radical change of American policy under Secretary Byrnes. Remnants of this policy influenced not only the general level of industry plans but created confusion and despair among Germans. It would now be trivial to explain in full the whole folly of this policy. Its psychological effect however, cannot be entirely undone. That the Russians and French entered Germany full of bitterness and revenge was understandable enough. The British and American policy remained substantially different. But the psychological change in the last period sufficed to give the less worthy elements in military government and the Control Commission a cheap excuse for indiscipline and rapaciousness. Everyone who has had a share, however modest, in military government knows that the military occupation and government of a defeated country demands an exceptional combination of qualities. The incentive to discipline created by danger is replaced by the consciousness of absolute power and the easy availability of loot. Yet it is at that very moment that the reaction of the conquered towards the conquerors is determined. At that very moment cool but purposeful detachment, firmness guided by a sure sense of moral values, discipline and above all clear long-term plans are more needed than at any other time. At the decisive moment guidance from the top was either missing or in the wrong direction.

Bold leadership was made more difficult by considerations of inter-allied policy. The main objective was, rightly, the maintenance of allied unity, then a more hopeful prospect than now. The Russians, while fairly independent in their own actions, would have resented any positive approach to the Germans by the Western powers. 'Non-fraternisation' policy was a necessary if temporary gesture to the people of Europe.

Yet it was in those early months that a constructive and discriminating approach to the German problems would have brought the greatest reward.

### CHAPTER 3

#### OUTLINE OF POLICIES AND METHODS OF MILITARY GOVERNMENT

THE substitution of four separate for one joint inter-allied military government had not only the most portentous political, economic and administrative consequences. It profoundly influenced from the start the psychological aspects of military government. Had there been a "supreme inter-allied authority determining the direction and principles of military government for the whole of Germany, the character of the various occupation zones might still have been influenced by differences of administrative methods and the behaviour of the occupation forces of different nationalities." There would not, however, have been the sharp comparison, the competition and, in many ways, the conflict between four different policies, methods of administration and standards of conduct. The division into four zones turned Germany into a huge stage in the world theatre on which the four principal actors played their roles, before a fascinated and increasingly critical audience. Many national qualities and policies hitherto known only to a few, especially in the case of Soviet Russia, now became a matter of common knowledge. (The general psychological effect of this competitive division was as bad for the allies as it was for the Germans.) For the allies it meant the collapse of the major and most important post-war experiment in international government and the stimulation rather than the smoothing out of inherent differences. (To the Germans it gave an opportunity of a critical and increasingly cynical comparison of the methods applied by their four different conquerors and morbid diversion in their increasing misery and helplessness.) The Germans could not but become to some extent the arbiters of the respective performances of the four occupying powers. They were no less aware than the allies themselves that the administration of Germany had two aspects: one concerned with the future of Germany herself, the other with

the future of Europe, and in particular with the relations of the four major powers. On at least one major occasion the ironical position of the Germans giving a verdict on their different conquerors was evident: in the case of the municipal elections in Berlin in October, 1946. At that time the Social Democratic Party was already outlawed in the Soviet zone outside Berlin but admitted in Berlin owing to the efforts of the Western allies. The resounding victory of the Social Democrats was an adverse verdict of the people of Berlin on the role of the Soviet-sponsored Socialist Unity Party and indirectly on the Soviet Government. Berlin, in this as in many other cases, focussed the problems existing in Germany as a whole.

Even a few months after the beginning of military government, the four zones had become four different worlds, closely associated in the minds of every German with the four occupying powers. A journey from Cologne to Frankfurt was currently described as a journey from England to America; from Leipzig to Nuremberg it meant a journey from Russia to America (with the difference that even now such a journey is for the average German infinitely more difficult to accomplish.) The Allied Control Council was established by a Proclamation of August 30, 1945, that is about five months after the effective beginning of military government. It has not been able to bridge this initial gulf, remaining throughout a loose superstructure over the four zones.

The British, Americans, Russians and French brought with them to Germany the characteristics of four great peoples widely different from each other in traditions, outlook and policies. The deepest gulf separated the Soviet from the Western zones, whether one thinks in terms of strategy, administrative methods, initial objectives, or last but not least, the difference of background in culture and civilisation. In other respects, the gulf between the British and Americans on the one hand and the Russians and French on the other hand was no less deep. If the gulf between the British and Americans has, on the whole, remained small, that was due to the initial community of command, training and administration under SHAEF—but also to a certain broad community of objectives in the occupation of Germany.

Any generalisation must simplify, but the following broad analysis will, I think, be confirmed by all who have had first-hand experience of military government in the different zones.

#### OBJECTIVES OF MILITARY GOVERNMENT

Russia and France had suffered years of occupation, exploitation and humiliation at the hands of Germans; the British and Americans had not, although Britain had of course physically suffered very much more than America. This caused an initial difference of objectives. The Russians and French were dominated by the desire for retaliation and reparation in a physical and moral sense; the British and Americans approached the problems of occupation more objectively and, initially, with a much stronger recognition of the need to save the rudiments of an ordered life from the chaos which they found. Whatever the long term objectives of their governments, Russian and French military government, in the first six months of the occupation, was essentially preoccupied with dismantling machinery, emptying the farms of cattle and horses, and living off the land and the people.<sup>1</sup> This overshadowed the first attempts to mould the zones according to Soviet and French policies. The overwhelming desire for retaliation and the either calculated or spontaneous but certainly undeniable relaxation of military discipline offset the very great psychological advantages with which the French, but in particular the Russians, started. The Russians had the immense prestige of their victory over the German forces and the advantage of being the exponents of a political and social system which, to some sections of the Left, seemed the clear and direct antithesis to National Socialism.<sup>2</sup> The French had a smaller but still definite advantage in having as their occupation zones a region of South-Western Germany which had long cultural and even political associations with France.<sup>2 1/2</sup>

The British and the American military government on the other hand started with the strict instruction not to live off the land except for the requisitioning of houses and emergency supplies.

<sup>1</sup> In Berlin the Russians achieved a remarkable feat of organisation, by getting the distribution of food organised almost immediately after the occupation, although the food mainly came from German stocks.

<sup>2</sup> Baden and the Rhine Province, for example, lived under the Napoleonic Code Civil until 1900.

In regard to food, this policy was fairly strictly adhered to, notwithstanding many German rumours to the contrary.<sup>3</sup> Despite numerous individual violations the British and American authorities made no use of German food resources other than by way of exchange (for example, of tinned preserves against fresh vegetables or eggs). Reparations were no immediate concern of military government. The policy of dismantling industries—until now of very small proportions as compared with the Russian and French zones—was not a primary pre-occupation of the British and American Executives in Military Government. Attention was therefore directed to the restoration of elementary physical facilities and the rebuilding of a new German administration. The greatest achievements of British and American military government lie in the early months of occupation when military government officers could, without much encumbrance, use their enthusiasm and ingenuity for constructive purposes.

In course of time these differences of objectives were reduced, for the Russians and French were faced with the necessity of formulating their long-term policies and methods no less than the British and Americans. The latter two governments were faced with the problems of reparations, of dismantling of industry and occupation questions. All four powers were confronted with the major problems which will be discussed in the second part of this book; the constitutional and administrative structure, the economic policy, the type of political life to be re-created, the social pattern of their zones. These matters became more and more predominant after the first year of occupation. The short-term differences disappeared as the long-term differences of policies and objectives crystallised and deepened.

The following generalisation would seem a fair conclusion from the first two years of military government.

#### 1. RUSSIAN OBJECTIVES

It is naturally much more difficult for any Western observer to give an accurate picture of Russian objectives than of any of the other

<sup>3</sup> A current rumour was that German butter was shipped to Britain or that collections of blankets for German refugees were sent abroad.

powers. Access to the Russian zone outside Berlin is still exceptional and Russian policies in Germany are hardly less difficult to analyse than their general policy. One factor emerges fairly clearly: Russian policy towards Germany has not been uniform, consistent or clear-cut. It appears to have been a compromise between two conflicting trends, one sponsored by the Soviet Military Government at Karlshorst, the other sponsored intermittently by Moscow. Karlshorst, with many officers of outstanding ability, seems to have pursued the line that a moderate reconstruction of the Russian zone of Germany, guided by parties friendly to the Soviet Government, was the best means of attaching the Russian zone permanently to the Soviet sphere, as well as the most intelligent way of getting reparations for Russia. Karlshorst therefore aimed at the earliest possible termination of the wholesale dismantling of industry in the Soviet zone, as a necessary condition of restoring confidence and a constructive outlook to the Germans. Time and again Moscow seems to have interfered with new dismantling orders inspired, it would seem, not only by Russia's needs but also by the policy of making Germany powerless and an economic desert rather than a prospective outpost of Soviet Russia.

Evidence of these conflicting policies abounds. From the commencement of occupation, the Soviet authorities displayed numberless posters throughout the Soviet zone quoting Stalin's utterances, in particular his famous speech of November, 1942, to the effect that the German state could never be destroyed and that the German nation would survive the Nazi regime. At the same time, however, Russia engaged in a policy of indiscriminate spoliation. On May 1, 1946, Marshall Sokolowski declared categorically that the dismantling of industries had stopped; but a few weeks later, during the first post-war Fair held at Leipzig, a new wave of dismantling was in full swing. This was followed by an energetic policy of re-starting industrial production in the Soviet zone of Germany, but in autumn of 1946 this was followed by a sudden wave of transporting specialised German factories, such as the "Zeiss Works in Zena" and various engineering plants in Berlin, en bloc, together with their whole skilled personnel, to Russia. During the same Fair at Leipzig, in May, 1946, all Germans confirmed that such industry as remained was geared to full production with all the methods familiar in

Soviet Russia itself.<sup>4</sup> Certainly some specialised industries were geared to full production in the immediate interest of the Soviet economy. It is an open secret that the famous Leuna Works were in 1946 fully engaged in the production of synthetic petrol, nitrogen and other chemicals. Economically, therefore, Russian policy appears to hover between the desire to get out of Germany what is possible and to weaken her permanently, through de-industrialisation, the deportation of skilled workers and a general poor standard of living, and the alternative objective of giving her zone a reasonable chance of recovery and hope for the future. On the Control Council Russia has pursued simultaneously two policies: one, presumably based on the assumption of a lasting division between East and West, directed towards the utmost economic weakening of the West and insisting on a rigid dismantling policy; the other, presumably based on the assumption of a German re-union, aiming at a strong German Government and Russian participation in the administration of the Ruhr.

Politically, Russian policy has been more clear-cut and simple. It has been that of encouraging to the utmost a German party in sympathy with the Soviet regime and with Russian policy, while preserving the appearance of formal democracy as far as consistent with this objective. The principal developments in this field are well-known: they consist above all in the creation of the Socialist Unity Party, which is the former Communist Party enlarged by a minority of Social Democrats, coupled with the outlawing of the Social Democratic Party everywhere except in Berlin, and the preservation of the two other parties, neither of which has a chance of rivalry with the Socialist Unity Party. Elections have taken place throughout the Soviet zone on a near-democratic basis but with many advantages to the Soviet sponsored Socialist Unity Party.<sup>5</sup> Local government is nearly entirely in its hands and it holds the key ministries of the Interior and Education in all the Länder. The Central Administrations at Berlin, which have recently acquired increased authority, are also now entirely controlled by the same party. The chairman of the new Economic

<sup>4</sup> Statistics prominently displayed at the Leipzig Fair purported to show the steady increase in industrial and agricultural production.

<sup>5</sup> One method was that of making it all but impossible for the other parties to put up candidates in rural districts.

- Council formed by the Administration is the head of the Economic Committee of the Socialist Unity Party. It also dominates seemingly non-political organisations, like the Trade Union or Youth Movements.

Finally, social policy has been directed towards the introduction of socialist reforms in industry and agriculture but in an empirical rather than a systematic way.<sup>6</sup>

## 2. FRENCH OBJECTIVES

French objectives can be stated in simpler terms. They have been dominated by the two-fold aim of permanently eliminating Germany as a political and military power, and of attaching the French zone as closely to France as possible while making it economically profitable to France.<sup>7</sup> The character of the French zone favoured the second objective to some extent. The Saar territory, with a coal production of 10.5 per cent. of the German total (pre-war) has been incorporated into the French orbit step by step, and openly so since its Customs union with France and the establishment of a Customs Frontier between the Saar and the rest of the French zone, in December, 1946, followed by the introduction of a separate Saar currency in June, 1947.

The rest of the zone has the great advantage of being mainly rural and relatively thinly populated. The French have been skilful enough to avoid accepting the masses of homeless and destitute refugees which have made the economic problems of the British and American zones so much more difficult. The zone is scheduled to receive 150,000 Germans from Austria, but only a small proportion have arrived. In any case, the total is insignificant compared with the British zone.

In pursuit of the first objective, France has persistently delayed the setting up of the Central Administration envisaged in the Potsdam Agreement (which she did not sign) and emphasised throughout the need for far-reaching Land autonomy. Only quite recently has she put forward a plan for a federal Germany in which the powers of the centre are restricted to the utmost.

<sup>6</sup> See further on this point below, p. 138 *et seq.*

<sup>7</sup> It is typical that, in the other three zones, the new German postage stamps appear as ordinary German stamps. In the French zone, they are marked: 'Zone Francaise' and different for each Land.

The other main industries of the zone are leather and watch-making and precision instruments—mostly peaceful industries with a high export potential and dispersed among many small units. Only the great chemical works at Ludwigshafen and Rheinfelden offer a major decartelisation and de-industrialisation problem.

The French were less encumbered than any of the other three powers by their own ideological propaganda and by the need to reconcile power politics and national interests with ideology and moral protestations. The French occupation of Germany is characterised by a sober and somewhat cynical realism tempered by a centuries old knowledge of Germans and the German problem.<sup>7a</sup> In a new official French survey of the administration in their zone, the head of Military Government puts as the first objective of economic administration, the responsibility of each occupying power to assure a balanced financial and commercial budget in its zone. Helped by the relatively favourable conditions which have just been mentioned, she has gone far in achieving this objective. She has kept her direct cost of occupation (that is, the charge on the French Treasury) at the low figure of 9 milliard Francs, and according to the official French view, 'These costs are largely compensated by the advantages of our presence in Germany: determination and valuation of industrial equipment available for reparations and above all restitution of raw materials and industrial products. Moreover, the economy of the zone is orientated towards the needs of France. This orientation of German potentialities for our needs is particularly precious at a period of rebuilding.'

Every aspect of economic life, feeding standards, administration, industrial priorities, the reorganisation of foreign trade, have been dominated by this consideration. The French Government has always regarded the idea of credits for the export and re-equipment of the zone as frankly ridiculous. If indigenous food resources did not leave enough for the population after the satisfaction of the needs of the occupying forces, that was unfortunate but could not be helped. Any public discussion of food conditions, the Saar problem and the problem of German unity is strictly forbidden.

<sup>7a</sup> 'Il ne s'agissait pas pour elle de thèses ou de voeux mais de satisfactions immédiates et vitales à obtenir' (M. Emile Laffon, in *Cahiers Français d'Information*, No. 77 (February, 1947)).

A Constance newspaper was banned for a week for publishing a resolution of the Baden Parliament on food conditions (June, 1947).

This sober and cynical attitude caused some shocks and resentment among Germans, mainly in the initial period. It has, however, had the advantage of exposing France far less to a comparison between promises and achievements than any of the other powers. Moreover, in pursuit of the same objective, and in recognition of France's vital need for coal, the French Administration immediately saw the paramount importance of re-activating coal production in the Saar and in this field remarkable success has been achieved, thanks to concentration on essentials: the return of Saar miners, the absolute priority in equipment, redirection of manpower, food and other privileges. Today, the Saar, with a daily production of over 30,000 tons, has reached 63 per cent. of its pre-war production, as compared with less than 50 per cent. in the Ruhr.

Again, it is common knowledge that the acceptance of personal gifts by French officials is very widespread in the French zone. But this is done in a spirit of cynical realism, as a kind of subsidiary reparation for Frenchmen individually, which the Germans have come to accept as part of the business of occupation. Finally, the French have perhaps had the most realistic attitude towards denazification. For the sake of efficiency, they have often tended to retain able administrators despite dubious records, especially if they were prepared to collaborate fully with the French. On the other hand, France knew, despite her deep and bitter resentment against the Germans, that there had been a large and active underground movement and that Germany had to be run by Germans. The French, therefore, from the beginning of 1946, established German denazification panels in an advisory capacity.

Practical and economic objectives dominate French policy in Germany. In the field of political and social reconstruction, her policy has been cautious and conservative, aiming at no more than a gradual restitution of Weimar institutions suppressed under the Nazi regime. France has therefore been content with the cautious reorganisation of the trade unions and works councils, and has not attempted any further structural social changes. The French were not, like Russia or, in a different sense, Britain and America, associated with a specific social ideology. Nor does

the social structure of Germany interest France particularly, except where it touches security.

In accordance with the old and noble position of France as a centre of Western Europe civilisation, French policy has been imaginative and constructive in the field of education. France has re-opened the University of Mainz, closed in 1798. Some of the best periodicals, such as *Die Gegenwart*, are published in the French zone. In the summer of 1946 France took a lead in the revival of international and inter-zonal contacts, by organising conferences at Freiburg and Tübingen of French, English and German University teachers and students.

### 3. AMERICAN OBJECTIVES

Of all the four occupation powers the Americans are less immediately involved in the future of their zone than any of the other three powers. What keeps the Americans in Germany is the implication of their participation in the war and the responsibilities following from their new role of one of the two greatest world powers which cannot dissociate itself from Europe. But the physical and political urgency is not the same for the United States as for the other three occupying powers. Russia and France have been immediate neighbours and victims of German aggression, Britain has had the German problem ever present since the beginning of the century. Americans, while having been involved twice in a German war, still look at Germany from a distance. Germany to them is, in every respect, a long way from home. American preoccupation has therefore been with making her German zone a reflection of her conceptions of democracy and liberty, but at the same time using her share in the German occupation for an increasingly active role in the four-power negotiations and world politics. Consequently, the American zone has had more and earlier elections than any other, with the double objective of restoring the people's sovereignty and reducing American commitments; the United States has pressed for the restoration of German unity, but of a loose federal pattern, with a minimum of planning powers at the centre.<sup>8</sup> She has transferred this conception to the bizonal agencies where it clashed with the British policy of stronger central authorities and economic planning. In the economic field American policy has

<sup>8</sup> See further below, p. 38.

however undergone a radical change after the first twelve months of occupation. American administration during the first year was still influenced by the Morgenthau policy of ruthless German de-industrialisation administered by State officials rather than business men. This was, in a sense, a survival of the New Deal era. With the advent of Secretary Byrnes culminating in his famous Stuttgart speech of September, 1946, a radical change in American policy was announced: that of restoring Germany to reasonable economic prosperity and giving her a chance of paying her way through a revival of industrial activity and exports. The change was heralded by the announcement in May, 1946, of the stopping of further dismantlings. Coupled with this has been an increasing replacement of the administrator by the business man. As capitalist philosophy regained ascendancy in the United States, so her economic policy towards Germany became more and more that of making a Germany as much of an economic proposition as was possible by ordinary business methods. Industrialists and business men now take an increasing share in the leading posts of American military government; business men travel freely in the zone in order to make direct business contacts. American business sees certain possibilities in Germany: one is the prospect of disposing of raw materials such as the cheaper brands of cotton which are needed for the revival of German peace industries and which could not otherwise be sold in the world market. There is also some danger of attempts by United States industrial concerns to use the prostration of German industry for the acquisition of German assets. These prospects were increased through the economic fusion with the British zone, which has by far the greater concentration of key industries.<sup>9</sup>

#### 4. BRITISH OBJECTIVES

British occupation objectives generally coincide with American objectives. Despite the greater economic plight of Britain and her sufferings in the war, British occupation has been dominated, though with many vacillations, by the objective of getting ruined Germany on her feet again, subject to military security. The immediate physical problems are greater than in any other zone. Out of a population of nearly 23 million (2½ million more than in

<sup>9</sup> See below, p. 159.

1939) about 7 million live in cities of over 200,000 where destruction ranges from 50 to 90 per cent. Out of 5,500,000 dwelling units in the zone, 1,600,000 have been irreparably damaged, 1,400,000 are capable of repair. Less than half of these have been repaired owing mainly to lack of fuel and materials. The 2½ million refugees are mainly old people, women and children. Britain, like America, feeds her occupation army and her control personnel out of her own resources. She has diverted a proportion of her meagre foreign exchange reserves to feed the Germans (8 per cent. of Britain's 1946 expenditure in the United States.)<sup>0</sup> She has been as hesitant as America though less determined to stop the dismantling of German industry other than selected war plants once it became clear that the economic and social catastrophe of Germany far exceeded all expectations and that the expected economic unity of Germany did not materialise. Politically, Britain, like America, envisages the restoration of German democracy on a Western pattern, but British and American conceptions of democracy are not identical and the methods chosen to inoculate Western democracy into Germany have differed accordingly.

Britain is however faced with by far the greatest economic dilemma of all the occupying powers. Apart from security considerations, neither Russia nor France need have any fear of re-activating their zones. Both can absorb much greater industrial capacity as well as the products of industry, for many years to come. To the United States her zone of occupation represents only a minor economic problem in relation to the productive capacity and the international trade of the U.S. as a whole. (But Britain, more than at any other time, lives or dies by her own industrial production and capacity to export, and it is in the British zone of Germany that the industries potentially competitive with British industries are largely concentrated. The British zone before the war contained 78 per cent. of the German iron and steel industry, 70 per cent. of its coal, 77 per cent. of its coke, and a substantial proportion of the textile, chemical and engineering industries of Europe. In the Control Commission, a large element is inspired

<sup>0</sup> Britain has not received much credit for some imaginative actions, such as the evacuation of children from Berlin to the country (winter, 1944-45) or the school meals organised since summer, 1946, which mean salvation to countless families.

by the wish to rebuild Germany as a healthy member of the international community; another holds a watching brief for British industry or specific firms anxious to prevent a revival of competitive industries.<sup>1</sup> British policy has in general been marked by conflicting pulls: the desire to prevent another German aggression and economic competition battles against the pressing need to reduce British burdens by helping Germany to help herself, and the long term policy objective of having a contented and peacefully employed people in the heart of Europe.

#### GERMANY AS THE BATTLEFIELD OF INTERNATIONAL POLITICS

During the second year of occupation the immediate purposes of military government in Germany as outlined in the Potsdam Declaration have been increasingly overshadowed by the deepening cleavages between the occupying powers themselves. Behind the endless discussions in the Control Council about reparations, dismantling of industry, currency reforms, denazification, control of scientific research, lies the growing conflict between Russia and the Western powers and more specifically between Russia and the United States. Considerations of what would be the best policy for Germany as such became mingled with considerations of Germany as a strategic pawn in the conflict of power politics.

Through all the vacillations and uncertainties of allied policies, it can be noticed that, from about May, 1946, onwards, American policy swung over from the policy of ruthless weakening to a policy of reconstruction in the West. Simultaneously, Russia began to discard her ruthless dismantling policy. Soon after, the Americans took the initiative in pressing for the bi-zonal economic fusion which was effected in September, 1946. With the exception of France, who looked on indifferently, the allied powers continued to profess their desire for the establishment of a central German administration, but their practical policy was more and more determined by the alternative assumption of a permanent division between the Eastern and Western zones of occupation. It is likely that the Americans over-estimated the chances of economic recovery

<sup>1</sup> This is quite apart from the general pooling of German patents which are accessible to all Allied powers, through the Board of Trade publications;

in a combined Western zone. The effect of eighteen months of a policy of dismantling and economic restrictionism became only fully apparent during the winter of 1946-47. Economic policy in the West is therefore overshadowed by the pre-occupation with recurrent emergencies of food supply, coal production, etc. If it is the American policy to put the Western zone really on her feet again, she is faced with the necessity of pumping supplies of food and raw materials into Germany far beyond anything planned up to the present. This means a readiness of Congress to accept financial commitments and political responsibilities, of which it shows little sign at the time of writing. But eventually a choice must be made. Twentieth century politics do not lend themselves to half-way solutions. It is the recognition of this fact which distinguishes Mr. Marshall's speech at Harvard University on June 5, 1947, stressing the futility of a series of emergency relief actions, as compared with a constructive, long-term relief plan.

The ideological aspect of the inter-allied conflict is no less significant. The French alone are comparatively neutral in this conflict. Except for a certain sense of mission regarding the superiority of French 'civilisation,' the French, as explained earlier on, have occupied Germany with a minimum of ideology and a maximum of realism. The other three powers, through wireless propaganda, pamphlets, posters, speeches, have identified themselves with noble purposes and political ideals of which they are now constantly reminded by disillusioned or cynical Germans, as well as by each other.

The Russians flooded their zone with posters quoting Stalin's speech on the indestructibility of the German state and people, as distinct from the Nazi regime. But they have, above all, stressed their obvious role as champions of state socialism and the organised working class. The Americans professed unceasingly the superiority of the 'American way of life,' as embodied in the American Constitution: a combination of personal liberties, freedom of capitalist enterprise and competition, direct popular sovereignty, and a loose federal structure.

The British were associated with the oldest and most proven system of parliamentary democracy; the election of a Labour

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Government, at the beginning of the occupation, seemed to make Britain, in addition, the natural champion of a social democracy, *i.e.*, moderate socialism achieved through free discussion and constitutional methods.

Both Russia and the United States have substantially behaved as expected. They are antipodes in social policy no less than in power politics, and Germans group themselves accordingly.

The British, however, have failed to live up to the role for which they seemed cast. The reasons for this, in particular the unfortunate emphasis on formal political reforms and the fumbling policy in the matter of socialisation, need fuller explanation.<sup>2</sup> The moral effect and the steady loss of leadership and moral prestige cannot be doubted. The British dilemma is hardly less marked in the social and ideological than in the economic field. Her strength in Germany as well as in inter-allied conferences must largely depend on a solution of these dilemmas, and a clarification of her purposes.

The critical part of this book will be particularly concerned with this problem.

### METHODS OF MILITARY GOVERNMENT

In the methods of military government the allies differ no less than in their objectives. In the first phase, a decisive difference emerged between the British, French and American methods of control on the one hand, and Russian control on the other hand. The former three had an elaborate scheme and military government staff specifically trained (often very inadequately) for their tasks, a force distinct from the occupation forces as such, and under separate command, except on the highest level. The Commanders-in-Chief are also the Military Governors. From their Deputies downwards Military Government and Occupation Forces are separate Commands. For Russia, on the other hand, military government was an aspect of military occupation. The Russians have never had a separate military government organisation, except at Headquarters. They now have a number of specialised and highly qualified officers at the top level, as well as political intelligence officers dispersed through the zone. On the whole, military govern-

<sup>2</sup> See below, pp. 103 *et seq.*, 142 *et seq.*, 165 *et seq.*

ment has been in the hands of regional and local commanders. This meant a much greater reliance on indirect control through sponsored German instruments—in particular the Communist (later the Socialist Unity) Party. The French have gradually built up a control machinery more akin to that of the Western powers but far more closely knit.<sup>3</sup> From the dissolution of SHAEF in July, 1945, American and British methods of control became increasingly different. The Americans, impelled largely by the imperative demands from home for reduction of personnel and the ever-present danger of Congress refusing the next appropriations, proceeded to reduce drastically both their occupation forces and military government machinery. By the end of 1946 their total Control Commission and military government personnel in all branches amounted to no more than 5,000. This went hand in hand with a swift transfer of responsibility to German authorities, the speeding up of constitution-making and the abolition of military government on lower and medium levels. Since then, the Americans have been entirely dependent on the loyalty of the German authorities. They have practically no staff in the field able to inspect effectively and to compare policy plans with execution. The British, on the other hand, increased their Control Commission personnel to an establishment of some 26,000<sup>4</sup> and built up an elaborate hierarchy of direct military government on all levels which only from the middle of 1946 onwards gave way to a gradual reduction of the lower levels and a cautious transition from direct Government to indirect control. The staff of technical inspectors is still vastly greater than in the American zone but the greater degree of industrialisation makes industrial control more complex.

Equipped with absolute power, the Allies had to decide how far they would try to imprint their particular conceptions of life and government on their zone of occupation. The failure of joint government was bound to stimulate the different powers towards shaping their zone in their own image.

During the first year of military government, when both the German machinery of administration and articulate German opinion

<sup>3</sup> See below, p. 160.

<sup>4</sup> The actual strength has never exceeded 22,000 and is now gradually being reduced.

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were practically non-existent, the occupying powers governed more freely and more absolutely according to their own lights. The common directives laid down in Potsdam were capable of much divergent interpretation. The SHAEF directives kept British and American policies more closely together, but afterwards constitutional and social policies became more and more distinct. From the second year onwards the occupying powers had to step more warily. They could less and less ignore the free expression of German democratic opinion which they were trying to build up; and they faced the psychological problem of a stiffening German opinion which might well resent reforms—whether they were good or bad—merely because they had been imposed by the occupying powers.

The effect of these factors on the four powers was intensified by differences in their basic conceptions of democracy and self-government. To the Russians, democracy in the Western sense, that is the creation of instruments of political equality and freedom of opinion, is, at most, a secondary consideration. Economic and social principles come first. The forms of political democracy are not rejected; but its essence, the recognition of different parties with the possibility of alternative governments expressing vitally different policies, has never been recognised in Soviet Russia herself. Moreover, Soviet Russia, while being an object of hatred and suspicion to large sections of the German population, exercises a powerful appeal upon a considerable minority just because of her social and economic programme. For all these reasons, Soviet Russia was not likely to be unduly impressed by considerations of formal democracy. On the other hand, the Soviet authorities were, no less than the other powers, aware of the inadvisability of imposing far-reaching social and political reforms from outside. They are in fact in process of modelling their zone on the Soviet pattern, but they do so gradually, and with as little direct Russian interference as possible. All the more far reaching measures introduced so far, such as the land reform, the partial expropriation of industrialists, the reform of legal training, are not introduced by Russian orders but through German resolutions or plebiscites. The large scale expropriation of industries, allegedly only those owned

by 'war criminals' in Saxony for example, was based upon a plebiscite held on June 30, 1946. The agrarian reform was carried out by the German administration in Berlin; but the Soviet authorities saw to it that there was fundamental harmony between their will and German measures of reform. The chosen instrument is the Socialist Unity Party whose leaders are in close touch with the Russians and which entirely control all forms of workers' organisations, especially the Trade Unions. Their main opponent, the Social Democratic Party, is outlawed outside Berlin. The other parties, that is, the Christian Democrats and the Liberals, have not the strength to pursue a really independent policy. Elections have been held throughout the zone, but outside the big towns the Socialist Unity Party, through its control of the Local Government machinery, had the virtual monopoly in putting up election lists. Thus Soviet Russia feels her way, steering a middle course between making her zone an integral part of the Soviet system, preserving forms of Western democracy rather more fully than in Soviet Russia itself, and selecting a chosen German instrument for the introduction of reforms on the Soviet pattern.

The dominating American objective has, since the end of 1945, been the introduction of a loose confederate pattern of democracy, strongly modelled upon the more conservative pattern of the Southern States. The cornerstones of their policy have been the theory that all power comes from the people and that the people mean the Länder, not any central or even federal government. This policy has however been mitigated and deflected by the necessity to preserve the sovereignty of military government, in execution either of quadripartite or American decisions. Second only to the theory of popular government has been the theory of de-cartelisation—that is to say, the breaking up of excessive economic concentrations—as an alternative to socialisation.

The British, too, have laid the main emphasis on the introduction of Western political democracy, but they have not moved with anything like the same speed as the Americans. At the time of writing, constitution-making in the British zone is still in a preliminary stage. British theory has been in all fields that of building democracy 'from the bottom upwards.' In conformity

with the British method of much more thorough-going direct control on all levels, the British have gone much further than the Americans in introducing measures of democratic reform by military government ordinance. Its major measures in this field have been the local government and electoral reforms. Both are modelled on British patterns and traditions.

In the social and economic field, certain measures were inevitable in view of the particular concentration of heavy industries in the British zone and the acknowledged close link of heavy industry with German militarism and the Nazi regime which led to the arrest and dispossession of a number of industrial leaders. This was part of the programme of de-centralisation and denazification and there was obviously no alternative but to follow it up with British trusteeship over such major industries as coal, iron and steel and the chemical industry. Since then the British Government, despite repeated declarations of its wish to see the large industries socialised, has done little more than appoint German public trustees in support of British trusteeship, but it is now likely to leave these matters increasingly in the hands of duly constituted German authorities. As regards decentralisation, the British have stood against the other three powers in opposing wholesale splitting up of large concerns, thus preventing a Control Council Law on this subject. To sum up, the Russians have given priority to the introduction of certain radical social reforms, notably land reform, gradual socialisation of industry and the breaking up of any associations of industrialists. The British, American and French have left the social pattern largely unchanged and concentrated on the introduction of forms of political democracy. As the German political machinery strengthens, the prospect of reforms being introduced by the occupying power diminishes. More will be said on this point, after the detailed discussion of social developments.

#### STANDARDS OF CONDUCT

For the average German the conduct of the occupying forces probably meant more than plans and systems. The German sees his conquerors every day. He feels the effect of their conduct in his

personal life. He can watch their bearing, their attire, their behaviour towards himself and towards each other. The average German will have hazy ideas about what British, Russian, American or French stand for but every one of them has seen hundreds of British, Russians, Americans or French requisitioning his house, passing by in the train, giving his children chocolate or going out with German girls.

It is easy to say what the standard of conduct of an occupier should be. (The allies had pledged themselves jointly and singly to the replacement of Nazi methods by 'democracy.') They could not therefore purport to imitate the terrible and bestial logic of the Nazi regime whose chosen corps of S.S. rulers trained in the Ordensburgen applied a calculated, merciless and systematic cruelty, rejecting humanitarianism on grounds of policy and principle. The allied ideals had to be fundamentally humanitarian, coupled with the firmness necessary towards a dangerous and potentially powerful ex-enemy. In the conduct of individual members of the occupation forces it meant dignity, self-discipline, justice and friendliness, tempered by firmness where there was a danger of obstruction to the main purposes of military government. The combination of such qualities is difficult to meet. It was more necessary than ever after a long war fought largely on ideological issues, and in relation to a country which had been flooded by allied ideological propaganda, especially during the last year of war. Human realities made it, however, almost impossible to expect such conduct. The sudden relaxation of danger, the sudden availability of loot, the hunger for women after years of effort, danger and privation, militates against the very qualities which are demanded. The occupier who, theoretically, should be aloof but just, wants to have his own back. Instead of heightened self discipline he wants an easier life. Only too often, Germans could observe the contrast between contemptuous superiority shown to them by a military government officer, and the domination exercised over the latter by his pretty German secretary.

Here, as in every other field, Germans had the cynical amusement of a comparative analysis in the four zones.

How do the allied standard of conduct compare ? Generalisations

are particularly difficult in this field but certain characteristic features have emerged after two years of occupation. The first question is, what did the Germans expect? (Their state of mind was confused by propaganda and the overwhelming shock of disaster. Nevertheless it was clear enough that from the Russians and the French they expected revenge and retaliation, but with this difference: that they looked upon the Russians as strangers, the people of another civilisation, whereas they looked upon the French as people fundamentally akin, despite centuries of struggle. From the British and Americans the Germans expected 'democracy' in the Western sense, humanity and food.) Many of these expectations had been encouraged by the radio propaganda from London, the excellence of which has probably been a doubtful blessing.

What did the Germans get? From the Russians and the French they certainly did get revenge. It burst upon them like a sudden flood in the first six months. In the Russian zone the extent and violence of retaliation differed according to the calibre of the occupying troops,<sup>5</sup> but on the whole the first six months were a tale of raping, looting and shooting. Germans came to live in deadly fear. But the Russian reaction was, on the whole, primitive and instinctive. (From the beginning cruelty was mingled with kindness.) There is hardly a person in Berlin who cannot tell a story of Russians raping women, shooting their husbands who attempted to protect them, but displaying touching kindness towards the children. The many Russian races and peoples which form the Soviet state still contains a big majority of peasants and ex-nomads. This reflected itself in Germany. There was generally nothing calculated in the orgy of retaliation of the first few months, and gradually the positive features began to emerge more clearly. (The Russians have not established the elaborate system of a separate world of occupiers distinct in its accommodation, its style of life, its food, except in some Headquarters districts. Many districts have been stripped bare, the army has lived off the land, and whole industries have been dismantled for reparations. But Russian officers travel in the same compartments as Germans, they live in

<sup>5</sup> Some parts of Saxony and Thuringia for example got off very lightly, whereas Berlin bore the full shock.

the same hotels and they mingle freely. During the first year these positive effects were doubtless small compared with the major shocks experienced by the Germans, but now that the wave of retaliation is over they may become more important.

The initial French reaction was on the whole similar to that of the Russians, but with some significant differences; the French once again had among their troops of occupation a large proportion of colonials, mainly Moroccans, and their instinctive savagery had a worse effect upon the Germans than that of the Russians. For they came in the name of a power purporting, and largely acknowledged by the Germans, to be a leading exponent of Western civilisation. Another difference was that between Germans and French there is a strange mixture of common values and repulsion. Politically the French have every reason for repulsion and bitterness against everything German,<sup>6</sup> but between them and in particular the South-West of Germany, which they occupy, there is a great deal of common standards of civilisation. It is a noticeable feature of the French occupation that the senior French officials get on very well with their opposite German numbers in the army, and there is a great deal of personal respect and sympathy.<sup>7</sup> Yet the French system of occupation as a whole is one of cold and rational exploitation which extends to a large proportion of the individual control personnel. The situation would be much worse if the French zone were not the least destroyed and most thinly populated of the four.

It is now freely acknowledged that the Americans have not altogether been good ambassadors of their own civilisation in the many European countries which they have entered as allies or conquerors during or after the war. This is mainly due to the contrast between the extremely high ideals constantly proclaimed by the Americans and the average conduct of their armies. This also applies to Germany where any restraint imposed upon the

<sup>6</sup> Some centuries ago when France was the most powerful state in Europe and Germany was disunited, Germans had reason to feel similarly towards the French.

<sup>7</sup> French national sensitiveness, heightened by her loss of power and years of humiliation, is illustrated by an amusing incident: the Restaurant of the Kommandaturre at Berlin, frequented and managed, in turn, by the four Powers, was decorated by a gifted German artist with friendly caricatures of Germans and Allied officers. The French alone objected, and their uniforms were hastily converted into British uniforms.

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occupying forces in allied countries, such as France or Belgium, was absent. In its general objectives and methods, American military government has set a very high standard, especially after it got rid of the Morgenthau policy. But much of the effect has been nullified through the conduct of the American forces of occupation. Looting has been on a very large scale. More important was the indirect looting through the acquisition of valuable assets for a packet of cigarettes or candy. No other occupying power had opportunities comparable to those of the American forces equipped with an abundance of money, cigarettes, sweets and other consumer goods. In December, 1945, before the American Government introduced special occupation money designed to stop the black market earnings of the occupation forces in dollars, it was officially announced that American forces in Germany had sent home three times the total amount of their pay in one month.<sup>8</sup> The spontaneous generosity and bigheartedness of Americans is notorious but hardly less notorious is the sight of slovenly and drunken troops, their often repulsive attitude towards women and the general contrast of the deportment of a large proportion of the occupying troops with the democratic ideals and the values proclaimed on paper. The total effect of this is however, likely to diminish steadily in view of the continuing reduction of the occupying forces and of the military government in the field.

There remains a factor which applies to both American and British: the continued rigid separation from the Germans, in style and methods of living. This was originally an aspect of the rigid policy of 'non-fraternisation,' which was certainly justified for a limited period, although it broke down immediately and completely in the field of sexual intercourse. At present the psychological

<sup>8</sup> I have heard some senior American control officers argue that as soon as the transfer of money acquired through black market deals in cigarettes, etc., into dollars was stopped there was nothing objectionable in these deals. If an American soldier sells a cigarette for 10 marks a piece or acquires a valuable collection of china for a packet of cigarettes, this will reach the people who can afford the luxuries such as farmers, while the people in need will re-sell their cigarettes for black market prices to those who can afford them. This argument completely ignores the moral effect of additional impoverishment of the occupied country through the exploitation by means of commodities cheap and plentiful to the occupier but precious to the occupied. It also ignores the social mal-distribution and the demoralising effect of these transactions upon both occupier and occupied.

effect of the continued separation is calamitous. Every day and night Germans, while herded together in unheated and overcrowded trains without windows, see passing by the illuminated and comfortable, often half empty trains reserved for occupying personnel. Available hotels in the ruined cities are almost entirely reserved. In the American zone (as distinct from the British) no Germans are yet admitted in military government messes as visitors. Most cinemas and theatres still have separate performances. In this respect the Russians are certain to score steadily at the expense of the Western allies. As Germans recover from the moral shock and the humiliation of defeat, they will increasingly resent the deepening contrast between their world of misery and shabbiness and the sheltered world of the conquerors. They will feel this all the more in relation to the Western occupying powers with whom they feel a greater community of life and standards of civilisation than with the Russians. The motive of the Russians in not encouraging a separate style of living may largely be that of not letting their forces enjoy a style of living too superior to home conditions, but the effect is considerable no matter what the motives may be.

The British case is possibly the saddest story of all. Until the beginning of 1946 there was no doubt at all that, for the vast majority of Germans, the British alone came near to the ideal of an occupation both respected and welcome. This did not apply only to Germans living in other zones who would naturally exaggerate the advantages of a zone they did not live in, as compared with the daily difficulties experienced in their own. All over Germany the praise of the British was sung, and in all circles of the population one would hear prayers for an all-British protectorate over Germany. The change has been dramatic.<sup>8a</sup> The reasons are only partly to be sought in a deterioration of standards of conduct. Undoubtedly the original occupation forces as well as military government in the British zone were more disciplined than in any other zone. Looting and raping, while by no means absent, were not a mass phenomenon. Military government officers, for reasons

<sup>8a</sup>In Berlin, the relative popularity of the British persists. According to a survey of public opinion reported in the *News Chronicle* of July 1, 1947, 43.6 per cent. of those interviewed preferred to live in the British sector.

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explained earlier on, were devoted to purposes of reconstruction like their American colleagues but less subject to corruption and indiscipline. The British veteran soldier was a good ambassador in Germany as elsewhere. As the veteran soldier and the trained military government officer went out, large numbers of untrained young soldiers and civilian Control Commission personnel came in. The greatest influx was in the Trades and Industries Division where the British authorities set up a control apparatus much more complex and numerous than any other power. The control personnel in the different branches of trade and industry were largely technical experts and business people, often of second rate calibre. There were those whom their firms thought they could spare without too much inconvenience, or others with no particular prospects at home, attracted by relatively good salaries, easier conditions of living (particularly in regard to drink and tobacco) and relative freedom from control.<sup>9</sup> A Controller (with the equivalent rank of Colonel) would control an entire German industry. British firms did not have to send their best people in order to get detailed information about competing German industries. Contacts were reinforced through the periodic missions of the T. Force, equipped with far-reaching powers of taking sample machines to Britain. An early Military Government Ordinance<sup>1</sup> had made British civilians serving in Germany subject to conviction by Military Government Courts for criminal offences as if committed in England, but unfortunately no effective use was made of this instrument until many months later.<sup>2</sup> Actual corruption, contrary to many rumours, always remained relatively small in the British zone.<sup>3</sup> Rumour, inflamed

<sup>9</sup> A business man with any moderate experience would, without difficulty, have the equivalent rank of a Major (Assistant Controller). His salary, with allowances, is well over £1,000. The cost of living is practically nil and alcohol is cheap and plentiful. This does not mean that the average Control Commission officer leads a life of luxury. After the first year, when rations were still on the military scale, the standard of feeding in the British messes has steadily deteriorated and opportunities for extra food are limited to clubs and Naafi canteens.

<sup>1</sup> No. 5 of September 1, 1945.

<sup>2</sup> Since January 1, 1947, Civilian Control Commission Courts have been established which try British civilian personnel according to a procedure closely modelled on ordinary Court procedure.

<sup>3</sup> I have had unsolicited statements from various German industrialists with a detailed knowledge of the different zones that the proportion of cases of corruption in the British zone (that is, of cases where an official action such as a production permit or authority for the providing of raw materials was made dependent upon personal advantage to the officer concerned) was infinitely smaller than in either the American or particularly in the French zone.

by the sudden transition from relative prosperity to misery in the British zone and the hysterical reaction which followed the original respect and sympathy of the Germans more violently than in any other zone, still tends to exaggerate. Worse than actual corruption has been the liberty given to many persons either in the Control Commission itself or persons coming on allegedly official missions from Britain, to take machines, trade secrets and otherwise using the skill and inventiveness of generations for the benefit of a particular British competitor.

Another type of British administrator suffers from the colonial mind. Many came to Germany with the idea that Germany could be administered on the pattern of an undeveloped British Colony. The British experience of colonial government may be more of a handicap than of a benefit in the administration of a highly developed and civilised country. Finally, the British have, more than any of the other occupying powers, isolated themselves from the life of the people, through establishing their headquarters in a series of small towns in the West of Germany. These towns, originally chosen as headquarters of the 21st Army Group, are situated in reasonably prosperous rural surroundings remote from the centres of misery, and they are so small as to be almost entirely occupied by military government and occupation forces. Consequently thousands of Control Commission officers working at headquarters see little outside their offices, messes and clubs.

Side by side with the less desirable elements there have been, from the beginning, many hundreds of military and civilian officers filled with a sense of mission and a consciousness of the uniqueness and urgency of their task. They have resented the presence of the other element. For another negative development the British authorities have only limited responsibility: short term policy during the first phase of occupation had been to get industry going as far as possible. The closing down and dismantling of industries was postponed. Existing stocks of raw materials which enabled many industries to carry on for a period from six to twelve months were used up. Their exhaustion from the beginning of 1946 onwards coincided with the deterioration of British personnel, with the increasing difficulties of the food situation, with a stiffening in the procedure of dismantling and closing down firms, with the exhaustion

of the physical and mental reserves of the population and with the reawakening of a critical attitude of mind on the part of the Germans. The major shock which had come with full force in the Russian and French zones came with the effect of a delayed action bomb in the British zone. In the Russian and French zones conditions have at least not become much worse since the Spring of 1946. In the British zone they have steadily deteriorated.

As will be shown later, this deterioration was, on the whole, due to circumstances outside British control. But the situation was unnecessarily aggravated by a number of psychological blunders. The conflict between the Reparations Division, which continues to operate the quadripartite reparations and dismantling plan, and the Economic Divisions, which attempt to prevent a further deterioration, leads to a position where hundreds of firms receive notice of being on the reparations list, a notice which is implemented only in a minority of cases. From that moment, uncertainty hangs over management and labour, and a frantic struggle for reprieve begins. In an economy, and among a population perpetually on the verge of collapse, the psychological effect is disastrous, but it may be partly explained by higher British policy still hovering between adherence to the original plan and a reversal of policy. But there is no excuse for such measures as the blowing up of the Blohm and Voss dockyards in Hamburg or the abortive scheme of a Control Commission centre in Hamburg. In the former case, the Navy resisted determined attempts of the Hamburg authorities and Trade Unions as well as of the British economic authorities to replace blowing up by dismantling, which would allow valuable parts to be saved for civilian purposes, and, above all, save the workers of Hamburg (traditionally socialist and anti-Nazi) from seeing another picture of mass destruction added to the ruins of Hamburg, not as the result of bombing but of peace-time action by the British. All these efforts were in vain, though they had a belated effect when, a little later, the Howaldt dockyards in Kiel were saved. There was no difference, in principle, between the two cases. It proved impossible to convince the authorities in time that the political and psychological harm done by the blowing up was infinitely greater than the economic one. The trouble was not

ill will, but a deplorable lack of imagination, coupled with the love of the modern engineer for big effects in construction and destruction. The 'Hamburg Project,' aiming at the concentration of the bulk of the British Control Commission (with families) in Hamburg meant the use of vast quantities of building materials and thousands of builders from all over the zone for the reconstruction of a sector of Hamburg, and the eviction of thousands of German families, in one of the worst destroyed of German big cities. Yet, at the time of execution, the bi-zonal fusion was already under discussion, and Hamburg, situated in the very North of the zone, could not possibly be envisaged as a bi-zonal capital. The project, half completed, is now virtually abandoned, but the harm is done. Lastly, the bringing over of families of British personnel—unquestionably a measure fully justified in principle—led to a period of requisitioning, objectionable not in principle but in the method of execution. One family would lose everything, house and other belongings, another might escape unscathed. There was no system of pooling of risk. In most of these cases faults were eventually rectified, but usually much too late to undo the harm done. If the British have experienced a greater change from strong sympathy to disillusionment than any of the other powers, it is, apart from the other factors already mentioned, due to their reputation of fairness and respect for law, strengthened by the first year of occupation.

It has been observed of the Rhineland occupation, after the first world war, that 'it was not so much the harshness of the occupation methods which produced resentment and embitterment among the subjects of the occupation regime, as it was the discrepancy between the proclaimed principles and their application.'<sup>4</sup>

This is far more true still of the present occupation. By comparison with the cold and systematic cruelty of the Nazi regime—tempered here and there by an equally cold and calculated mildness—all the allies have been humane. It is by comparison with the standards set by themselves that they have failed.

<sup>4</sup> Fraenkel, *Military Occupation and the Rule of Law: Occupation Government in the Rhineland, 1918-1923*. Oxford University Press, 1944.

## CHAPTER 4

### THE STRUCTURE OF MILITARY GOVERNMENT

#### THE ALLIED CONTROL COUNCIL<sup>1</sup>

IN actual importance for the military government of Germany and for the life of the average German, the Allied Control Council does not come first. Had the original plans matured, it would have been the instrument of joint inter-allied government of Germany, directing a German administration. Actually, it was constituted belatedly by a Proclamation of August 30, 1945,<sup>2</sup> and it has never become more than a loose superstructure. It is, however, in theory, the supreme organ of control of the military government.

'In virtue of the supreme authority and powers thus assumed by the four Governments the Control Council has been established and supreme authority in matters affecting Germany as a whole has been conferred upon the Control Council.'<sup>3</sup>

The four military governors form the Control Council proper. Their deputies form a co-ordinating committee which normally meets twice a week and attempts to co-ordinate the papers submitted and the measures recommended to it by the inter-allied directorates. The directorates themselves are organised on functional lines and correspond to the main divisions of the Control Commissions, which in turn reflect the main function of branches of government.<sup>4</sup> There are twelve directorates—for economics, food, manpower, finance, reparations, transport, political affairs, law, internal affairs and administration and for prisoners of war and displaced persons. There is also a service directorate which deals with problems of the occupation forces proper. It is in these functional directorates that the main technical work is done. They are staffed by the heads of the divisions concerned and their deputies, assisted by other functional officers. These directorates are doing an enormous amount of work. They have debated and produced proposals on such matters as German currency reform, denazification or the reform of German law. Often enough proposals do not go

<sup>1</sup> Cf. Anne Whyte, *International Affairs*, Vol. 23, p. 36 *seq.* <sup>2</sup> See Appendix, p. 276.

<sup>3</sup> Proclamation establishing the Control Council, Article II.

<sup>4</sup> See Appendix on the structure of the British Control Commission.

beyond the discussion stage even in the directorate. More often, however, they fail to pass the co-ordinating committee where higher inter-allied policy makes itself fully felt.<sup>5</sup> Whatever measures are finally passed by the Control Council are issued in one of five forms of legislative announcements:

- (1) Proclamations announcing matters of special importance to the occupying power or to the German people or both;
- (2) Laws enacting matters of general application;
- (3) Orders enacting other requirements imposed by the Control Council on Germany;
- (4) Directives communicating policy or administrative decisions of the Control Council;
- (5) Instructions imposing a Control Council requirement directly upon a particular authority.<sup>6</sup>

It is a corollary to the effective division of Germany into four zones, with four policies and four separate administrative machines, that the legislation of the Control Council has hardly touched the surface of German affairs. It is its being in existence more than the effect of its decisions which is of significance. While it exists, some measure of coherence is preserved among the allies and the way is not barred to the eventual establishment of a central administration. Moreover, the maintenance of permanent and close personal contacts between the top level administrators as well as the functional branches of the different Control Commissions is an important factor. In spite of the increasing difficulties in the way of overcoming the zonal divisions, each of the occupying powers will be reluctant to sever this link for reasons both of inter-allied relationships and the preservation of its own influence in the government of Germany.

Among measures of more than superficial importance passed by the Control Council, the following may be mentioned:—

#### *Laws*

The laws of March 30 and April 10, 1946, re-establishing a system of German Labour Courts and of Works Councils; a series of Taxation laws, imposing uniform rates of both direct and indirect taxation for the whole of Germany;<sup>7</sup> Law No. 25 of April 29, 1946

<sup>5</sup> The Control Council Report, submitted to the Foreign Ministers at Moscow, in March, 1947, registers numerous such disagreements.

<sup>6</sup> See Directive No. 10, dated September 22, 1945.

(amended November 12, 1946), on the Control of Scientific Research; Law No. 48 of February, 1947, sanctioning the dissolution of Prussia; and a number of more or less trivial laws dealing with such matters as demilitarisation, military instruction, marriage laws, population census, etc.

#### *Directives*

Here again the majority of measures are trivial by comparison with the major problems of military government, but No. 24, on the removal from office and positions of responsibility of Nazis and persons hostile to Allied purposes, is of vital significance. The implementation of this directive has been one of the greatest problems of military government in Germany. An early Proclamation of great importance, dated October 20, 1945, lays down the fundamental principles of judicial reform. Directive No. 14 ordered the maintenance of the existing wage structure, but Directive No. 41 allowed a rise of 20 per cent. in miners' wages to be negotiated between management and miners' organisations. This was implemented in all zones.

The enactment and issue of a Control Council measure means a uniform regulation of that particular field throughout Germany. Executive authority rests with the military commanders of the different zones, and theirs is the whole immediate responsibility for the fate of their zone, for its food, its politics, its social pattern and the standard of living of its inhabitants. Consequently every commander interprets the Control Council measure with a view to his responsibilities. The extent to which he is free to interpret or even modify a Control Council measure varies. Some are general, some specific, some are imperative, others permissive.

The effect of some of the major Control Council measures may be illustrated as follows:

- (1) Directive No. 24 on denazification laid down ninety-nine categories of removal from office or posts of responsibility. The implementation of this directive in the zones will be explained in a subsequent chapter.<sup>7</sup> The directive has

<sup>7</sup> The most important are the taxes on Tobacco, Alcohol and Beer of May 10, 1946, the Sugar Tax of June 20, 1946, and the amendment to Income Tax Law of February 11, 1946.

<sup>8</sup> See below, p. 117 *et seq.*

certainly narrowed the gap between the four zones in the field of denazification; but it has not prevented the continuation of many fundamental differences. Not only do the four occupying powers continue to accuse each other of evading denazification; the machinery differs. Certainly the Soviet method differs radically from that of the Western zones.

- (2) The Control Council Law on Tobacco Tax of May 10, 1946, imposed a uniform tax on cigarettes, cigars and pipe tobacco of a certain percentage of the retail price. In the case of cigars it was 90 per cent. of the retail price, making necessary a tenfold increase in the price to the consumer. As the cigar is in Germany the small man's smoke and a major portion of the cigar industry, employing some 30,000 people, is in the British zone, the effect—an immediate and complete paralysis of the industry—was disastrous for the British zone. Unanimous protests by all types of parties and organisations in the British zone, coupled with those of the British Economic Control authorities themselves, who had not been consulted before the imposition of the tax, eventually led the British authorities to reduce the effective tax to 80 per cent. and defer the rest. This meant the reduction of the retail price, which made it possible for the industry to resume limited manufacture. Later the other zones followed suit, so that uniformity was eventually restored.
- (3) Control Council Law No. 22 laid down certain principles on Works Councils, such as the election of members by secret voting and their limitation to persons actually working in the enterprise concerned; it also permitted the participation of trade unions in the organisation of elections and the proposal of candidates. Owing to the difference in the structure and function of trade unions, particularly as between the Soviet and other zones, the actual function exercised by the Works Councils in the Soviet zone, where they have a vital share in the control and management of industry, has been very different from the Western zones, where their functions are much more restricted.<sup>82</sup>

<sup>82</sup> See further, p. 163.

It is in no way surprising that the number of important subjects covered by Control Council decisions is not larger. The decisions of the Control Council require unanimity. If the allies could achieve more unanimity on fundamental problems affecting Germany, the military government of Germany would present an entirely different aspect. Among the fundamental subjects which the Control Council has discussed again and again without result are, in particular:

- (1) The interpretation of the Potsdam Agreement regarding the economic unity of Germany.
- (2) The Reparations Issue.
- (3) Currency Reform.
- (4) Principles of social and economic policy, such as land reform, socialisation of industry, decartelisation, employers' and workers' organisations.

For the Foreign Ministers' Conference, in March and April, 1947, the Control Council prepared a comprehensive Report on the principal aspects of military government. Apart from much valuable statistical material on comparative measures and developments in the four zones, it records both agreements and disagreements among the four allies. The Report shows clearly deep cleavages on a number of vital matters, and many more fundamental cleavages are hidden behind the assertion of all the powers that they have faithfully adhered to the Potsdam Agreement and re-introduced 'democratic' principles; but it is equally clear that the mere existence of the Potsdam Agreement and of a joint machinery has so far prevented the divisions from becoming so deep and final that even the attempt to mend them could no longer be made.

#### THE ALLIED GOVERNMENT OF BERLIN

The allied government of Berlin is in the hands of a joint council of the four allied powers and is, in certain respects, modelled upon the Allied Control Council for Germany. There is, however, the decisive difference that the allied government of Berlin, the Kommandatura,<sup>9</sup> is not, like the Control Council, a mere superstructure

<sup>9</sup> A word not known in English, French or Russian, but similar to words known to all these three languages. The choice of this word for the allied government of Berlin was a nice piece of diplomacy.

without executive powers; it is the actual government of Berlin, which has been functioning as such since July, 1945.

The Kommandatura itself consists of four generals representing the four powers and functioning at the same time as commandants of the four allied sectors into which Berlin is divided. The four commandants (each with a deputy) are served by chiefs of staffs, each with two assistants. The four powers also provide liaison officers with the German City Administration. Corresponding to the directorates of the Allied Control Council, a number of functional committees do the technical preparatory work for the Kommandatura. They cover all the different functions of city government, such as trade and industry, building and housing, cultural affairs, legal affairs, communications, public utilities and sport. All decisions of the Kommandatura must be unanimous. If no agreement is reached, the matter must be submitted to the Allied Control Council as a superior authority.

The Kommandatura of Berlin faces an administrative problem of great complexity. As the highest governing authority for Berlin, it controls the German City Administration, now reconstituted on a democratic basis with a City Parliament (Stadtverordnetenversammlung) and a City Executive (Magistrat). Both Kommandatura and Magistrat are responsible for Berlin as a whole. But at the same time Berlin is divided into four sectors, each controlled by one occupying power. To this extent the allied control of Berlin repeats the failure of the allies to establish joint government. But the quadripartite disintegration of Germany is infinitely worse and more noticeable to the ordinary citizen when it affects one city. Whereas the vast majority of Germans have remained within their zone of occupation, the Berliner moves daily from one sector to another. He experiences and judges daily the differences in language, demeanour, policy and institutions exhibited by the four allied powers.

The significance of this division has moved in accordance with the greater or lesser intensity of allied policy differences. Between autumn, 1945, and summer, 1946, progress towards integration seemed to prevail, on the whole, over conflict and disintegration. The Kommandatura achieved, above all, a joint food and coal supply plan for Berlin, with a unified ration scale and supply quotas

agreed among the four powers. Despite many temporary hitches and growing disagreement among the powers, the scheme functioned, and the food situation of Berlin, while miserable enough, did not sink to the level of some parts of the zones. None of the powers could afford to 'lose face' by failing in its supply. The Kommandatura have also agreed, after many difficulties, on an election procedure for Berlin implemented by the municipal election of October, 1946, and the subsequent reconstitution of the administration of Berlin.

But the growing differences of policy and the antagonism between the powers were reflected increasingly in the administration of Berlin. The administrative division of Berlin into four was bad enough; but the four sectors have increasingly become economic appendages of their zones, and Berlin has consequently been split into four economic entities. The immense difficulties of such a situation are obvious if one considers that only the Russian sector of Berlin is directly linked with the corresponding zone of occupation, whereas the other three sectors are hundreds of miles away from the Western zones of occupation, and transport is limited to strictly controlled lines and trunk roads passing through the Russian zone. Industrially, Berlin was the greatest single German centre of finishing industries, entirely dependent on supplies from outside for food and raw materials. But in 1936 Berlin contributed 10·2 per cent. to the national income of Germany, 8·7 per cent. of national industrial output and no less than 48 per cent. of the total German electrical industry.<sup>1</sup> Berlin's industries are of course distributed over the whole area. It is one of the most fantastic consequences of the present state of affairs that coherent industrial units are torn apart through the division into sectors. To take a few examples: the great industrial concern of Siemens, situated in the British sector, finds it increasingly difficult to get spare parts or supplies from subsidiaries in other sectors. Bewag, in the Russian sector, supplying Berlin's power, needs months of negotiation to supply spare parts to a power station in a Western sector. The Soviet

<sup>1</sup> Berlin also had a predominant share in some other industries, notably the clothing industry (35 per cent.), the printing and paper goods industry (20 per cent.), the instrument and optical industry (18 per cent.), the machinery industries (12 per cent.). Cf. *International Affairs*, July, 1945.

Government more and more tended to send extra supplies of food or brown coal briquets to the Russian sector of Berlin, especially before the municipal elections. Freedom of movement between the sectors becomes correspondingly more difficult. Residents of one of the three non-Russian sectors can no longer risk excursions on lakes between Wannsee and Potsdam; young people in particular are liable to sudden arrest and deportation if they venture into the waters belonging to the Russian sector.

There are parallel difficulties on the administrative side. Berlin is divided into twenty administrative districts which are apportioned among the four allied sectors. The City Administration, subject to the orders of the Kommandatura, controls all these districts, but each of the allied powers exercises administrative control over the district administrations in its sector. There are almost daily conflicts of policy in such matters as personnel, denazification and confiscation. The heads of the districts (*Bezirksbürgermeister*) are appointed and dismissed by the Magistrat, with the consent of the Kommandatura, but the district military governor can suspend them from office in urgent cases. For the appointment and dismissal of all lesser officials in the district, however, it is the military governor of the district who must give his consent to the Magistrat. While there are Allied Control Council directives on denazification,<sup>2</sup> their practical implementation in the four zones has varied considerably. Personnel policy clashed sharply until the elections of October, 1946, while the Magistrat was still the one originally appointed by the Russians. There was consequently a permanent tug-of-war between the tendency of the three Western powers to have, in their districts, officials from the moderate left to the moderate right, as contrasted with the policy of the Russians and of the Magistrat to appoint Communists or near-Communists. This tension was somewhat reduced after the victory of the Social Democrats in the elections of October, 1946, and the reconstitution of the City Administration. But the immediate effect of this victory has been a marked tendency of the Russian Military Government to make the administration of Berlin more difficult for the Germans and to strengthen the powers of the Kommandatura. In March

<sup>2</sup> See below, pp. 115, 308.

and April, 1947, the Kommandatura was occupied with prolonged discussions on a new law designed to give the Kommandatura the power to alter existing laws affecting the administration of Berlin and to punish the infringement of any orders by the administration. The most ominous sign of growing disintegration is the order given in April, 1947, by the Russian Military Government, to supply the Russian sector of Berlin separately. This amounts to a virtual breakdown of the joint food administration. Nor could the allies obtain agreement on the new Oberbürgermeister proposed by the Stadtverordnetenversammlung, in May, 1947.<sup>3</sup> Eventually the Russians secured an important but deplorable victory, by obtaining the reluctant agreement of the other allies to the need for approval by the Kommandatura of any Lord Mayor elected by the City Parliament. This means not only another victory for the paralysing veto power, but also a grave setback for parliamentary democracy in Berlin.

The allied government of Berlin, after some promising signs of being a genuine international government in a limited sphere, is thus becoming more and more the symbol of allied disagreements. The astute Berliner watches this situation with growing cynicism and disgust and with decreasing respect for the superiority of allied methods of control.

**THE STRUCTURE OF MILITARY GOVERNMENT ADMINISTRATION**

The structure of military government was largely determined by the German administrative system, and by the original need to shadow each level of German administration with a military government detachment. Consequently the Western powers, originally united under the SHAEF command, trained military government teams divided both vertically and horizontally. Headquarters Command represented central control for the entire Western zone of occupation; but with the dissolution of SHAEF this gave way to three separate headquarters for the British, American and French zones. The highest executive level of military government were the regional detachments at Land or Province level. Under them, 'R.B.' detachments controlled the

<sup>3</sup> The Russians object to the Social Democratic nominee, Fritz Reuter, because he left the Communist Party twenty-five years ago.

larger administrative districts known as Regierungsbezirke in the provinces of Prussia and in Bavaria. Lastly, K detachments controlled the district administrations of towns and rural districts respectively. For the first six months of occupation, the main power and responsibility rested with the lowest level of military government. The complete breakdown of communications and the multitude of local emergencies made the district commander largely independent of higher orders. This was conducive to initiative and resourcefulness, but incompatible with co-ordinated planning.<sup>4</sup> Gradually the weight shifted first to the regional detachments and eventually from them to central headquarters. As the original military government system gave way to a mixed military and civil form of military government, the original scheme was largely preserved, and the highest authority still rests in all zones with the military commander. The effective chiefs of military government are senior general officers functioning as deputy military governors. Though the majority of officers below the military governor are now civilians, the structure of military government is still modelled upon the original scheme. During the last year all zones have progressively eliminated the lower levels of military government, in line with the process of gradually replacing direct military government by supervisory control and of transferring executive responsibility to the new German administration. The Americans gradually abolished all levels of military government below the region.<sup>5</sup> The British replaced the Kreis military government by 'Kreis Resident Officers' entrusted with the general supervision of Kreis administration. Both the regional and headquarters organisations of military government are split up functionally. The functions correspond to the main branches of government.<sup>6</sup> But the

<sup>4</sup> In the early months of occupation it was a familiar feature to see a young captain of twenty-five governing an area, with many thousands or even hundred thousands of people, practically unfettered. Some rose to this opportunity magnificently, others abused it. All of them must have found the return to civilian life a strangely sobering experience.

<sup>5</sup> Except for Public Safety teams.

<sup>6</sup> See Appendix, p. 351, on the structure of the British Control Commission and Military Government. The main scheme was devised before the capitulation and therefore inevitably influenced by the Nazi system. The responsibility of the Manpower Division for Housing, for example, must be traced to the fact that the Ministry of Labour became responsible for Housing, and Ley, the Reich Commissioner for Housing, was also Head of the German Labour Front.

particular situation of Germany causes certain additions, such as the division concerned with prisoners of war and displaced persons and the division concerned with reparations.<sup>7</sup>

In summer, 1946, the British introduced four Regional Commissioners to take charge of the four regions of the British zone. They are, like the commandant of the British sector of Berlin, directly under the Military Governor, and they exercise overall control over their region. The exact limitation of their functions in relation to those of the functional branches of the Control Commission has caused some difficulties. It is a function of the Regional Commissioner to supervise and guard the specific interests of the region under his control. To some extent therefore functional officers, e.g., for trade and industry, food and agriculture in the regions are under his overall control. Yet they take their policy orders from their functional superiors at headquarters. This has given rise to some acute problems in the case of emergency diversions of electric power, food supplies, dismantling, production permits, etc. This difficulty is unavoidable wherever a central authority has no separate executive apparatus of its own. As long as this dual control persists the only remedy lies in the closest collaboration of regional and central headquarters.

The characteristic feature of the British organisation is the grouping of the functional divisions under two Sub-Commissions, for Economics and Government. It proved necessary to co-ordinate the Divisions concerned with closely related problems, such as Industry and Reparations. As is apparent from the Table reproduced on p. 351, the Finance and Legal Divisions have remained outside this grouping. There are also various co-

<sup>7</sup> There is a certain confusion as to the relation of the terms 'Control Commission' and 'Military Government.' The whole of the control machinery in all zones exercises the functions of military government in the legal and administrative sense. Administratively the entire machinery is under the orders of the Military Governor, who is also Commander-in-Chief. As regards personal status, civilian members of the Control Commission and civil servants are not under military discipline. In the British zone they are, since January 1, 1947, no longer under the jurisdiction of military government courts but under Control Commission courts; but this does not justify a differentiation between Control Commission and Military Government. The Control Commission is now the main instrument of military government. The army of occupation, on the other hand, is the instrument of military occupation. It is only in the person of the Commander-in-Chief and Military Governor that the two strands are united. Legally, Germany is under the same type of occupation (discussed below, in Chapter 5) regardless of the military or civilian status of personnel.

ordinating committees, discussing problems of joint concern. A general measure, such as Ordinance No. 57, on the powers of the Länder in the British zone, will first be co-ordinated within the Government Sub-Commission, and then be discussed with the Economic Sub-Commission. There are, however, two obvious weaknesses in the scheme. The first is the independence of the Finance Division, which reflects itself in the corresponding German administration. This independence has some justification in regard to budget matters, but not in regard to such matters as currency reform, which are intimately connected with economic policy. Even greater difficulties have been caused by the grouping of Manpower under the Government Sub-Commission, despite its obvious intimate connection with labour and economic problems. The independence of the Legal Division, on the other hand, is justified by its task of bringing matters of any kind into legal shape.

The French scheme of organisation seems more logical and effective. It has only two functional 'Directions Générales' apart from the directorates for law and public safety, which are independent. The Direction Générale des Affaires Administratives includes internal and educational affairs, information services, communications and public health. The Direction Générale de l'Economie et des Finances includes industrial production, food and agriculture, public works and transport, finance, manpower, and reparations. Thus, all the essentially economic functions are under one direction.

Russia, Britain and the United States have gradually shifted their main policy-making personnel to Berlin. Their military government organisation in the zone has more and more become an executive instrument. France, on the other hand, emphasises her aloofness from Berlin and her policy of regionalism, by maintaining the centre of military government in the zone, at Baden-Baden, and by according a great degree of autonomy to its regional governments, the Délégations Supérieures des Provinces. In conformity with this policy, France has also refrained from creating any German zonal authorities of more than an advisory character.

In the Soviet zone, the specialisation of military government was less marked from the beginning. Specialisation is confined to military government headquarters at Karlshorst (SMA) and to a

small number of functional officers at regional headquarters.<sup>8</sup> Executive authority rests with the military commanders. This has the advantage of avoiding, from the regional level downwards, the frequent problems created in the Western zones by the independence of occupation troops from military government,<sup>9</sup> but it has the disadvantage of making the regional commanders less inclined to accept orders from military government headquarters. The almost complete executive independence of the regional commanders in the Soviet zone has indeed until recently been a marked feature of Soviet Military Government. Not infrequently the regional commanders took their orders direct from Moscow, and these were often in conflict with orders from Karlshorst, especially on reparations and industrial matters. Central direction appears to be strengthening, as the German central administrations are being developed.

#### BIPARTITE CONTROL

Partial re-integration of military government was achieved for the British and U.S. zones of occupation through the bi-zonal fusion of September, 1946. Bipartite control over the six functions, which are the object of bi-zonal fusion, has not re-introduced the joint command of SHAEF. The control staffs are not integrated into one command but work jointly under alternate chairmen. But as the chairmen of the different control groups alternate, it is possible for a British chairman to give directions to American staff and vice versa. The scheme is therefore an improved version of quadripartite government, is confined to two of the four powers, and is helped by a far greater degree of common principles and confidence.<sup>9a</sup>

<sup>8</sup> Only political intelligence officers, armed with undefined powers of a secret police character, seem to be distributed throughout the zone.

<sup>9</sup> The armed forces would often take direct action, interfering with military government plans in regard to requisitioning of houses or supply of food, commodities and power. No one below the Commander-in-Chief himself could stop this.

<sup>9a</sup> See further below, p. 88 *et seq.*

PART TWO  
THE MAIN PROBLEMS

CHAPTER 5

THE CONSTITUTIONAL PROBLEM

THE LEGAL AND CONSTITUTIONAL POSITION OF GERMANY

THE present legal status of Germany is no less unique than the whole problem of allied military government. Wars are normally terminated either by the complete subjugation of one party and the annexation of its territory by the victor<sup>1</sup> or, more frequently, by a treaty of peace which leaves the parties legally untouched, as independent states. After the first world war, Germany, though truncated and with a new form of government, retained her identity and concluded the peace treaties. During the major part of the last war the same assumption still prevailed. Control was to be much tougher and more comprehensive, but Germany, it was presumed, would be represented by a government succeeding the Nazi government. The last year of the war brought a decisive change which found expression in the Potsdam Agreement of August 2nd 1945.<sup>2</sup> Without doubt this agreement between Soviet Russia, the United States and Great Britain does not assume or envisage the disappearance of Germany as a political unit. Part 2 Section IX provides: 'The administration in Germany should be directed towards the decentralisation of political structure and development of local responsibility. To this end: . . . . 'For the time being no central German Government shall be established. Notwithstanding this, however, certain essential central German administrative departments headed by State Secretaries shall be established, particularly in the fields of Finance, Transport, Communications, Foreign Trade and Industry. Such Departments will act under the direction of the Control Council.' With the

<sup>1</sup> Examples are the annexation of the Kingdom of Hanover by Prussia in 1866, of the Orange Free State and the South African Republic by Great Britain in 1900, and of Abyssinia by Italy in 1936.

<sup>2</sup> See Appendix, p. 261 *et seq.*

- exception of the French, who did not sign the Potsdam Agreement and have only under continued pressure partially modified their view that the dissolution of Germany as a political unit would be desirable, the other allies have time and again stressed their adherence to the conception of the survival of Germany as a political and constitutional unit. Thus, the communication from the Deputy Military Governor for the U.S. zone, approving the constitutions in the U.S. zone, specifically stresses the necessity to read the constitution 'Subject to the preservation of a German State.'<sup>3</sup> The Soviet Government has time and again declined its adherence to the principle of a united German state and it has deliberately constituted the central administrations for the Soviet zone at Berlin as prototypes of a future German administration.

Normally, the preservation of the conquered enemy as a state implies the conclusion, sooner or later, of a peace treaty with that state. An eventual peace treaty with Germany is still envisaged but it is likely to be indefinitely delayed. Meanwhile it is difficult to fit the legal and constitutional situation of Germany into any existing category.

*De facto* there is no German Government or any other German authority exercising the sovereignty of government. This is evident not only from the terms of the Potsdam Agreement but even more from the reality of the situation. Originally there were no German authorities whatsoever capable or empowered to govern the country. Gradually new administrations and Land Governments have been built up, but beyond any doubt there is at present no German authority of a governmental character representing Germany as a whole. Proclamation No. 1 of the Control Council dated August 30, 1945, dispenses any doubt on this subject: 'I. As announced on 5th June, 1945, supreme authority with respect to Germany has been assumed by the Governments of the United States of America, the Union of Soviet Socialist Republics, the United Kingdom, and the Provisional Government of the French Republic. II. In virtue of the supreme authorities and powers thus assumed by the four

<sup>3</sup> Cf. General Clay's letter to the President of the Bavarian Constitutional Assembly of October 24, 1946: 'Your use of the term "Bavarian National" is therefore acknowledged only as it embodies a citizen of Bavaria who is also a citizen of Germany as it is administered by the Allied Control, and as later it may be administered by some form of German Government.'

Governments the Control Council has been established and supreme authority in matters affecting Germany as a whole has been conferred upon the Control Council.'

What is the status of Germany pending the conclusion of a Peace Treaty? The simplest assumption would be that Germany is still at war with the allies. This is the view of the British Foreign Office, as expressed in a recent case.<sup>4</sup>

The certificate, accepted as conclusive by the Court, was as follows:

- '(1) That under paragraph 5 of the Preamble to the Declaration dated June 5th, 1945, of the unconditional surrender of Germany, the Governments of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics, and France assumed supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command, and any state, municipal or local government or authority. The assumption for the purposes stated above does not effect the annexation of Germany.
- (2) That in consequence of this Declaration, Germany still exists as a State and German nationality as a nationality, but that the Allied Control Commission are the agency through which the Government of Germany is carried on.
- (3) No Treaty of Peace or Declaration by the Allied Powers having been made terminating the state of war with Germany, His Majesty is still in a state of war with Germany. Although, as provided in the Declaration of Surrender, all active hostilities have ceased.'

Insofar as this statement—whose immediate effect is of course confined to English law—confirms the survival of Germany as a state, it is entirely correct. Indeed no other theory could possibly be put forward by any of the four allied governments. It would be incompatible with the very object and existence of the Control Council and the main theme of the discussions at the repeated conferences between the four powers. The difficulty of the declaration lies in the assumption that the allied powers are still at war with Germany although 'all active hostilities have ceased.' If

<sup>4</sup> *R. v. Bottrell, ex p. Küchenmeister*, (1946) 1 All E.R. 635.

the allies are still at war with Germany, this would normally mean that third states, such as Switzerland or Sweden, are neutrals and that the rules of belligerency apply in the relations between Germany and the allies. It is, however, obvious that the rules of neutrality are not and could not reasonably be applied to the present relations between third states and the former belligerents. Such matters as the duty of impartiality, the prohibition of loans to either belligerent, the liability to seizure of contraband goods—which now cover practically the entire range of commodities—the prohibition against neutral states supplying armaments to either belligerent, make no sense in the present situation. Nor could a state of belligerency be compatible with the agreement on the liquidation of German assets in Switzerland, made between the allies, by virtue of their supreme authority over Germany, and Switzerland.<sup>5</sup> Nor could even the widest interpretation of the rules of warfare bring the powers claimed and exercised by the allies in Germany within the scope of belligerent occupation. The present writer has persistently argued<sup>6</sup> that the revolutionary change in the social structure of states and in the methods of modern warfare has made the majority of the rules of warfare obsolete. But even the most elastic interpretation could not bring the wholesale abolition of laws, the denazification procedure, the arrest of thousands of individuals, the introduction of sweeping social reforms, the expropriation of industries, and above all the sweeping changes in the territorial and constitutional structure of Germany within the rights of belligerent occupation. These are symbols of sovereign government, yet it is of the essence of belligerent occupation that it does not claim such powers.<sup>7</sup>

<sup>5</sup> Cmd. 6880.

<sup>6</sup> For example, in *Transactions of the Grotius Society*, 1940; *What is Wrong with International Law?* 1941.

<sup>7</sup> Cf. Oppenheim's *International Law*, 6th edition, vol. 2, p. 342: 'But, although as regards the safety of his army and the purpose of war the occupant is vested with an almost absolute power, as he is not the Sovereign of the territory, he has no right to make changes in the laws or in the administration, other than those which are temporarily necessitated by his interest in the maintenance and safety of his army and the realisation of the purpose of war. On the contrary, he has the duty of administering the country according to the existing laws and the existing rules of administration; he must ensure public order and safety, must respect family honour and life, individual life, private property, religious convictions and liberty.'

It has recently been argued that 'in these peculiar circumstances the state of war has become so refined and technical as practically to alter the character of the concept; for it is no longer a part of the machinery for the conduct of hostilities but has become part of the machinery of control of an already conquered enemy. It is a two-edged weapon of control, for not only does it mean that Germany can be treated as an enemy state but also that her foreign relations can be conducted according to the allies or state of belligerency. . . . The proclamation of the state and of each assumption of the supreme authority over the whole territory of the enemy is indeed to claim the best of both worlds; the conquered enjoys the rights conferred by his conquerors, yet stops short of permitting his conquest to resolve the state of war.'<sup>8</sup> This elegantly evades the real problem. It may be that 'The conquered enjoys the rights conferred by his conquerors, yet stops short of permitting his conquest to resolve the state of war,' but this does not justify the further implicit assumption that the allies are at war with themselves. If, as is undeniable, the Allied Control Council exercises the functions of government in Germany, its members would have a split personality. This means pushing the relativity of concepts too far. It would for example be the duty of the Control Council to assert rules of warfare on behalf of Germany against the allied governments. The realisation of the unprecedented lengths of control exercised by the allies in Germany has led some writers<sup>9</sup> to the conclusion that Germany has in fact been annexed and the war has ended through complete conquest (*debellatio*). But this, as shown, would make nonsense of the whole purpose of the machinery of allied control in Germany. Nor does the view that Germany has ceased to exist as a state, but the four Powers as joint sovereigns administer 'Germany as a separate international entity'<sup>10</sup> provide a more satisfactory solution. This theory would conveniently dispose of any allied responsibility for Germany's debts but at the cost of consistency with International Law. The recognition of a new state would presuppose that the new Germany is a state, that is an entity with a sovereign government. What legal character, other than of a state, could the

<sup>8</sup> R. Y. Jennings, *British Year Book of International Law*, 1946, p. 38.

<sup>9</sup> E.g., Kelsen, *American Journal of International Law*, Vol. 39, p. 518. Similarly, Quincy Wright, *ibidem*, Vol. 41, p. 50.

<sup>10</sup> Schwarzenberger, *Tulane Law Review*, 1947.

'separate international entity' have? My own submission would be that, by tacit agreement between the occupying powers and other states, the rules of belligerency have been suspended and replaced by a *de facto* application of the laws of peace. This does not fully explain certain differentiations in the treatment accorded by the states at war with any of the occupying powers, but it is nearest to the facts of the situation. A status mixtus, between war and peace, would not be without precedent in International Law.<sup>1</sup> It is not, however, surprising that International Law—inadequate to cope with many problems of our days—should not be fully equipped to deal with an entirely unprecedented situation. No amount of ingenuity can produce a watertight legal answer to the problem; but the following would seem to be the least strained interpretation of a very extraordinary situation:

- (1) Germany has not ceased to exist as a state.
- (2) There is no German authority capable of exercising the functions of statehood and government in Germany.
- (3) The functions of government are exercised by the four commanders-in-chief, jointly on the Control Council, and separately in their zones, on behalf of the four allied governments.<sup>1a</sup>
- (4) The powers of the four allied governments are unlimited except for agreement among them to preserve the continuity of the German state.
- (5) Although the war has not been finally terminated either by conquest or by a treaty of peace, the laws of peace apply *de facto* to the relations between Germany as represented by the allied Control authorities and the outer world.
- (6) The solution of such problems as the responsibility for Germany's public debts or the continued validity of pre-war treaties is left in suspense as going beyond the purposes of allied government in Germany.<sup>2</sup>

<sup>1</sup> Schwarzenberger, *American Journal of International Law*, Vol. 37, pp. 460, 469.

<sup>1a</sup> In the discussions on an European economic plan initiated by France and Great Britain in July, 1947, the Commanders-in-Chief are representing Germany.

<sup>2</sup> This analysis is broadly in agreement with that of Mann, *International Law Quarterly*, 1947, No. 3, and with that of Jennings, *loc cit.*, except for his assumption of continued belligerency.

- (7) Eventually, a treaty of peace will either revive the full statehood of Germany, or replace her by a number of separate states, which will seek to obtain recognition according to International Law.

#### CONSTITUTIONAL DEVELOPMENTS SINCE THE WAR

In the Potsdam Agreement the three allied powers laid down that 'the administration in Germany should be directed towards the decentralisation of the political structure and the development of local responsibility. To this end: . . . representative and elected principles shall be introduced into regional, provincial and state (Land) administration as rapidly as may be justified by the successful application of these principles in local self-government.'

Subsequent development was determined by two factors: first, the absence of any coherent German administration above the level of a Land or a province, secondly the zonal divisions and the lack of allied coherence which prevented the application of a general plan for regional reform. The consequences have been fateful. Gradually, while preserving the notion of a German state, the four allies have developed their zones on federal lines involving the complete remaking of states and boundaries. In the result they have created the elements of a federal state without a coherent conception of a federal system or the elements of a federal government. Only one aspect of this constitutional revolution was formally sanctioned ex post by the Allied Control Council: the dissolution of the State of Prussia whose constituent provinces were spread over the four occupation zones.<sup>3</sup>

Almost invariably constitutional development has been from looser towards closer forms of association of states held together by common bonds. The history of Switzerland, of the U.S.A., of Germany and of the British Dominions, shows the gradual tightening of bonds leading from confederate association to federation and, in some cases, from a federation to a unitary state. It is true that, in the case of both Soviet Russia and present-day Yugoslavia, a centralistic structure has been replaced by federal association. Soviet Russia consists of a number of federal republics, together

<sup>3</sup> Control Council Law of February 25, 1947.

with autonomous republics and lesser self-governing units. Yugoslavia to-day consists of six federal states based mainly on ethnical and religious characteristics. But in the case of both, the increase of cultural autonomy and certain other aspects of self-government is more than cancelled by the concentration of military and economic power at the centre and, above all, by the absolute predominance of one party through which the whole country is controlled and held together.

Germany, from the Customs Union of 1834 onwards, had developed through the confederate and federal stage towards a unitary state. The attempt to reverse this process was therefore in itself unique. Its success pre-supposed the reorganisation of Germany according to agreed and sound principles. Numerous plans for the regional reform of Germany had been put forward between the two wars.<sup>4</sup> These projects all aimed, in one form or another, at the breaking up of the unhealthy predominance of Prussia, in size and population, in relation to the rest of Germany. The re-grouping was based on political, cultural, racial or economic planning principles. Most of the projects envisaged a number of twelve to fifteen Länder. Needless to say, all presupposed the existence of a Reich, with a strong Government. Broadly speaking, it may be said that any sound and lasting regional organisation and decentralisation depends on units which are reasonably balanced in relation to each other, in terms of size, population and resources, and which have a sufficient measure of internal coherence whether the cohesion is due to cultural, historical or economic links. The allied reorganisation of Germany was deflected from this objective by three factors: firstly, the cutting off of a substantial part of Germany up to the Oder-Neisse line eliminated a substantial part of Eastern Germany; secondly, the arbitrary division of the remainder into four separate zones made healthy regional organisation much more difficult; finally, the reorganisation which has actually taken place has been deeply influenced by national or international policies cutting across healthy principles of regional reorganisation.

<sup>4</sup> They are collected in R. E. Dickinson, *The Regions of Germany*, 1945.

Appendix 1 (pp. xii and xiii) shows the present division of Germany. A brief survey of the present regional units gives the following picture:

#### THE PRESENT TERRITORIAL REORGANISATION OF GERMANY

Berlin (population 3,200,000), which always had a fairly independent constitutional status within Prussia, is now altogether separate and directly under allied control. On the whole it is closer to the status of a fifth occupation zone than to that of any regional unit within the four zones.<sup>5</sup> The Soviet zone is now reorganised in five Länder. Brandenburg, outside Berlin, with a population of 2,600,000, corresponds to the former Prussian province except for the part east of the Oder-Neisse line. Land Sachsen (population 5,600,000) is the former federal state of Sachsen. Sachsen-Anhalt (population 4,300,000) is composed of the former Prussian province of Saxony and the small state of Anhalt. Thüringen (population 3,100,000) is a former federal state. Mecklenburg (population 2,200,000) is composed of the former federal state of Mecklenburg and that part of the former Prussian province of Pomerania which has not been turned over to Polish administration.

All these units are now constituted as Länder, that is, as states which form the potential units of a federation. Instead of a federal government they have for the time being the 'Central Administrations' for the Soviet zone at Berlin.

The American zone, in addition to the city state of Bremen which is an enclave in the British zone, consists of three major units, of which two are entirely new. Bavaria, the biggest (population 9,000,000), has remained intact.<sup>6</sup> The state of Hessen (population 3,800,000) has been constituted of two separate units, the former Prussian province of Hessen-Nassau—which had been annexed by Prussia in 1866 and, under the Nazi regime divided into two provinces, Kurhessen and Nassau—has been combined with the former Land Hessen—except for the Mainz and Worms district,

<sup>5</sup> The Kommandatura is directly under the Control Council. But the four sectors are increasingly regarded as parts of the four zones. The Commandant of the British sector, for example, ranks with the Regional Commissioners of the four Länder in the zone.

<sup>6</sup> Apart from the Palatinate, which under the Nazi regime had become part of the Westmark.

which is part of the French zone—into one medium-sized Land. Four districts of Hessen-Nassau have, however, been added to the French zone, as a bridgehead on the right bank of the Rhine. The third of the Länder in the U.S. zone, Würtemberg-Baden (population 3,400,000), is, on the other hand, the artificial combination of the northern halves of the ancient Länder of Würtemberg and Baden, which were left in the U.S. zone.

The French zone has left the southern parts of Baden (population 1,180,000) and Würtemberg (population 1,100,000) as separate states, with new capitals established at Freiburg and Tübingen. A separate administrative territory has been made out of the Saar district, which is now well on the way towards incorporation into France. As a preliminary step, France has established Customs barriers between the Saar territory and the rest of the French zone, while abolishing these barriers between the Saar and France. She has also staked a claim for economic incorporation of the Saar into France which has been approved in principle by the British and the U.S. Governments, though not by the Soviet Government, at the Moscow Conference in April, 1947. The Saar is not a Land and was not included in the Landtag elections held in May, 1947. The remainder of the zone (Land Rheinland-Pfalz) consists of the southern part of the former Prussian Rhine Province and of the Palatinate, once a Bavarian district separate from the main territory of Bavaria and parts of Land Hessen. A portion of the Rhine Province with about 100,000 inhabitants has, however, been added to the Saar, thus increasing the potential area of annexation.

The British zone also has undergone major reorganisation. The only units which have remained unchanged are the former Prussian province of Schleswig-Holstein (population 2,650,000), now a Land, and the ancient Hanseatic city of Hamburg (population 1,425,000) which, as a city state, also has the position of a Land. The remainder of the zone now consists of two big Länder. Niedersachsen, constituted by an Ordinance of November 1, 1946 (population 6,900,000), consists of the former Prussian province of Hanover and the former small federal states of Oldenburg, Braunschweig and Schaumburg-Lippe. Finally, the biggest single, and by far the most highly industrialised, state of Germany is Nordrhein-Westfalen (population nearly 12,000,000), composed of the former

Prussian province of Westphalia, the northern part of the Rhine Province and Land Lippe. This Land contains the entire industrial region known as the Ruhr.

This brief survey shows that, quite apart from the form which an eventual reunited Germany may take, constitutional changes of vital significance have already taken place in the different parts of Germany. The first important fact is the historic dissolution of the State of Prussia, identified largely with German militarism<sup>7</sup> since the beginning of the eighteenth century. As pointed out earlier,<sup>8</sup> the Nazis had prepared the dissolution of Prussia by placing her provinces effectively on the same footing as the major German Länder outside Prussia. Many Reich reform projects between the two wars envisaged the dissolution of Prussia and the reorganisation of the Reich in a number of balanced regions. They assumed a unified Reich, whereas the liquidation of Prussia by the allies was forced upon them through the effective dismemberment of Prussia in the different zones and the building of a new German administration from the bottom upwards to Land or Provincial level.

The second major factor is the adoption of the constitutional form of a Land by all four powers, despite their divergent views on the future constitution of Germany. This again was the result partly of constitutional principle, partly of necessity. In the absence of Reich or zonal government, the major units had to be constituted as states unless democratic reorganisation was to be postponed indefinitely. The third factor of lasting significance is the territorial reorganisation of the Länder. This has been the result of two entirely different motives and purposes: one group of Länder is a result of necessity, determined by the accidental and arbitrary *de facto* frontiers of present-day Germany, or by allied policies, unconnected with principles of a sound regional reorganisation. Some of the reorganisations in this group are innocuous. The combination of Mecklenburg and Vorpommern, for example, unites two essentially agricultural areas, an obvious solution after the extension of the Polish *de facto* frontier to the

<sup>7</sup> A not altogether correct over-simplification. The Nazi movement originated in Bavaria, and for many years after the revolution of 1918 Prussia was the main stronghold of republicanism and the left.

<sup>8</sup> See above, p. 2.

Oder-Neisse line. In a similar category is the merger of the southern part of the Rhine Province with the Palatinate in the French zone, resulting from the division of the former Rhine Province between the British and French zones and the splitting off of the Saar territory. The unfortunate part is not the combination of this part of the French zone into one Land, but its separation from the northern part of the U.S. zone with which it is closely linked economically. Another type of reform in this same group, also the result of arbitrary zone boundaries, is thoroughly bad. This applies in particular to the division between the northern and southern parts of Württemberg and Baden. The absurdity of this perpetuation of the original districts of military occupation is generally recognised. But all attempts at rectification have failed. Both Baden and Württemberg have existed as separate states for a long time. Both were members of the Napoleonic Confederation and developed parliamentary institutions long before the remainder of Germany. Almost alone of all the German states they have remained intact even through the Nazi regime, not only as political but also as administrative, economic and cultural units. The populations are racially distinct. Both states have had a fairly good record of liberal government which became evident in the rather smooth tradition from monarchy to republic in 1918. The division between the zones leaves the two capitals, Stuttgart and Karlsruhe, at the very southern end of the American zone. The American part of Baden contains all the larger towns of Baden except for Freiburg; the French parts of both Baden and Württemberg are overwhelmingly rural. In the circumstances, the American Government made the best of a very bad job by amalgamating the northern parts of Württemberg and Baden into one Land. The feeling of the people of Württemberg and Baden themselves is illustrated by Article 44 of the new Constitution of Württemberg-Baden (October 24, 1946), which says that the state territory consists 'at present' of the territorial parts of the states Württemberg and Baden listed in the Annexe and that 'in accordance with its former division into Württemberg and Baden the state territory is now divided into the provinces Württemberg and Baden, the parallel structure and self government of which are assured and

regulated by law.' The Constitution further provides in Article 107 that the qualified majorities required for amendment of the Constitution will not be required in the case of a reunion of the northern and southern halves of Württemberg and Baden respectively.

International policy rather than considerations of regional reform also predominate in the case of Nordrhein-Westfalen. Only one of the former Reich reform projects, that of Baumann,<sup>9</sup> contemplated the combination of Nordrhein-Westfalen in one region. The advantage of such a Land lies in the administrative combination of the closely integrated Ruhr area which was formerly divided between Westphalia and the Rhine Province. Through the union of the whole of Rhineland and Westphalia, instead of the Ruhr area alone, a considerable agricultural area has been linked with a highly industrialised and urbanised region. These considerations matter little where boundaries are only of administrative significance. They are important where fully fledged states are held together loosely or not at all by a higher constitutional authority. But, for the purposes of healthy regional de-centralisation, this Land suffers from an excessive concentration of population and industrial potential. It contains, with nearly 12 millions, considerably more than half the population of the British zone.<sup>10</sup> Three-quarters of German heavy industry are concentrated in this one Land. Yet it is proposed to give each German Land one vote in the future Constitution. The importance of Nordrhein-Westfalen for the new German state is so overwhelming that neither the assets nor the burdens of its industry can be anything less than a national (or international) concern. Such questions as the socialisation of industry or the rebuilding of the Ruhr can hardly be matters for one Land, as seems, at present, to be the plan of the British Government. Potentially the greatest asset of the British zone, this Land is to-day its greatest problem. Although its formation was precipitated by the desire to keep the whole of that area administratively together, pending a decision on the proposed internationalisation of the Ruhr, Britain has rightly refused to contemplate international administra-

<sup>9</sup> C. F. Dickinson, *loc. cit.*, ch. I.

<sup>10</sup> The next biggest German state, Bavaria (with 9,000,000), has the advantage of historic continuity and of a far better balance between industry and agriculture.

tion unless and until the whole future structure of Germany—and, it may be added, of Europe—is put on an entirely different basis. This Land remains therefore a major German constitutional problem.

In the second category are two reforms which mark a definite advance toward a sound regional organisation and are in line with many Reich reform projects. They are the constitution of Niedersachsen in the British zone and of Hessen in the U.S. zone. Niedersachsen has absorbed three smaller Länder which, despite their historical traditions, could not hope to survive a sound regional reform. They are Oldenburg, Braunschweig and Schaumburg-Lippe. On the other hand, Bremen, with its seaport, Wesermünde, has been left out. Being largely under American administration, it continues as a Land of the U.S. zone. The unity of Niedersachsen is largely based on cultural factors, but the omission of Bremen weakens its economic unity.

Hessen also suffers from the cutting off of the French bridgehead in the former province of Hessen-Nassau, and from the rigid administrative and economic frontier which now separates her from the Rheinpfalz in the French zone. Otherwise, the formation of this Land is an immense improvement over the previous state of affairs. The annexation of its northern part by Prussia in 1866 deserved to be undone as much as the Nazi division of the country.<sup>1</sup>

Finally, the reconstitution of the old Hanseatic cities of Hamburg and Bremen as Länder is a revival of an old tradition. Both enjoyed the status of federal City States in Imperial Germany as well as under the Weimar Republic. But again the greatly increased independence of the Länder, by comparison with their former position under the strongly governed Reich, creates new problems. Federal states which are supposed to govern themselves to a large extent, not only administratively and culturally but also economically, must be reasonably well-balanced units. It is also inadvisable to give Länder of grossly unequal importance the same vote in federal

<sup>1</sup> In the first phase of the American occupation the confusion had become even worse. Frankfurt, the headquarters of the SHAEF command, was turned into an enclave, together with some other towns in the region. The remnants of Land Hessen and the provinces of Nassau and Kurhessen were administered separately. It was even proposed at one time to turn the old University town of Marburg into a new capital for the northern part of Hessen.

or confederate councils. In the original bi-zonal administrations, Bremen, with some 380,000 inhabitants, had one vote in the bi-zonal administrations, the same as Nordrhein-Westfalen with over 11,000,000. In the new bi-zonal Economic Council, representation is in proportion to population, with one vote per Land as minimum.<sup>2</sup> Complete equality will never be possible, but the creation of well balanced units greatly reduces the gravity of the problem of equality.

#### PRINCIPLES OF FEDERAL REORGANISATION

While it is not intended in this book to discuss the constitutional principles of the new Land constitutions in great detail, some of their most salient features are directly connected with military government policy. All occupying powers have now formed Länder as the constituent units of a potential Federation, but constitutional conceptions differ widely. All four allied governments have formulated and begun to implement their plans for the future constitutional structure of Germany. All the Länder, except those in the British zone, now have constitutions adopted by elected German bodies.

#### THE SOVIET ZONE

The process of constitution-making in the Soviet zone shows a combination of 'one party' predominance, which is the most important real factor in the political life of the zone, with democratic forms, which make the process of constitution-making in the Soviet zone superficially similar to that of the Western powers.

On November 19, 1946, an 'S.E.D. Draft for a future German Constitution'<sup>3</sup> was published in all Russian controlled papers. This draft has formed the basis of deliberations in the different Land parliaments. The constitutions adopted in the various Länder are therefore basically similar. Uniformity was further ensured by the formation, in January, 1947, of a committee of

<sup>2</sup> The question how to blend the formal equality of States with the actual inequality caused through big differences in wealth and population, is an old problem of constitutional and federal law. In bicameral systems, the solution can be adopted of having equality of votes in the higher chamber, but proportionate vote in the lower. Republican Germany had the proportion principle in both chambers, but in the federal Council (Reichsrat) the vote of Prussia was so limited as to prevent her from having a majority over the other Länder.

<sup>3</sup> S.E.D. stands for the Communist controlled Socialist Unity Party.

the three parties permitted in the Soviet zone. This committee is, of course, dominated by the S.E.D. The S.E.D. draft is in many respects modelled upon the Weimar Constitution; a few important changes, however, make it possible for one predominant party to exercise greater power than any party could have exercised under the Weimar Constitution.

The draft abolishes the dangerous emergency powers enjoyed by the Reichspräsident under the Weimar Constitution. These powers included the suspension of most of the guaranteed constitutional rights in certain emergencies. Its exercise by Hindenburg, in the first few months of the Nazi regime, greatly facilitated the semi-legal transition to dictatorship. But the new constitutions abolish the whole institution of a President as Head of State. All sovereign power is concentrated in the parliament, whose President acts as Head of State. Under the Weimar Constitution, the President, entrusted with the promulgation of laws, acted as a check on the constitutionality of laws passed by parliament. Another check was exercised by the law courts, which claimed for themselves the right to examine whether an act of parliament had been passed by the necessary constitutional majority.<sup>4</sup> The new constitutions concentrate all these powers in the parliament which is elected according to proportional representation. Candidates, however, can only be put up by 'permitted political parties and organisations.' The voting age is eighteen in some constitutions, twenty in others. The parliament not only elects the Prime Minister and confirms his cabinet; it also supervises the judiciary and decides, through its constitutional committee, on the constitutionality of any law, the validity of which is disputed. The judges of the highest courts as well as the public prosecutor are to be elected by parliament, whereas a great though undefined proportion of the other judges will be lay judges.<sup>5</sup> In the leading Western constitutions, the judges are either appointed by the head of the executive who is

<sup>4</sup> The new constitutions in the U.S. and French zones provide instead for a constitutional court which alone shall have the right to decide on the constitutionality of laws. The same proposal is made in the British, American and French drafts for the future constitution of Germany.

<sup>5</sup> This opens up another possibility of political influence in the judiciary (People's Judiciary).

independent of the legislature (as in the U.S.) or they have special guarantees against removal (as in Great Britain). Election of judges by parliament is the procedure in a number of American states, and it is well-known to have been the source of much bribery and corruption, mainly through the pressure exercised by powerful economic interests on the legislature. The new constitutions are thus an expression of direct popular democracy at the expense of a separation of powers.<sup>6</sup>

The new constitutions follow the pattern of the Weimar Constitution in enumerating a catalogue of fundamental rights, which, as in the Weimar Constitution, are often made 'subject to laws' and are proclamations of principles rather than enforceable rights. One of the new constitutions, that of Saxony, goes so far as to permit specifically the infringement of fundamental rights of private property, freedom of movement and freedom of labour until 1950.

The S.E.D. draft proclaims the right to property 'subject to law.' It lays down the principle of State economic planning, and the immediate socialisation of minerals and natural resources and of private enterprises owned by 'war criminals and active National Socialists.'<sup>7</sup> It confirms the existing position, by proclaiming the abolition of private ownership of land above 100 hectares. Otherwise, it is content with moderate principles of social justice, the right to work, and the break-up of private monopolies. The socialisation principles have meanwhile been implemented by laws passed in Thüringen and Sachsen, in May, 1947.

The most vital difference between the S.E.D. draft on the one hand and of the British and American views on the reconstitution of Germany—which is also reflected in the constitutions of the U.S. zone—on the other hand, lies in the extent of subjects reserved to central parliament. Article 75 of the S.E.D. draft<sup>7a</sup> enumerates, as subjects reserved to the central parliament, almost the entire field of legislation, from industry, agriculture, trade, economic planning, to press and education, and it does not specifically allocate

<sup>6</sup> The publication of the Draft in the newspapers carried two slogans: 'German unity is our national task.' 'No separation of powers; people's sovereignty instead!'

<sup>7</sup> Cf. the Saxony plebiscite, above, p. 37.

<sup>7a</sup> See below, p. 287.

any subjects to the Land governments. The Länder retain the right to legislate only insofar as the central government does not use its power. The central government is given complete control over finance. All this goes far beyond the Weimar Constitution, which reserved important subjects of legislation to the Länder.

The constitutional pattern as it emerges in the Soviet zone thus shows a strong centralist tendency, although it assumes a federal structure. The centrifugal tendencies which the federal structure normally produces are countered by the practical predominance of the S.E.D. and the expectation that it will continue to be the predominant party.<sup>8</sup> Meanwhile, the foundations for a future central government are being laid through the steady strengthening of the central administrations for the Soviet zone.

In September, 1945, twelve central administrations were constituted: Apart from the five economic departments—Fuel and Power, Trade and Consumer Goods, Industry, Transport, Agriculture and Forestry—Finance, Labour, Statistics, Health, Justice, Education and Postal Services were represented. Later an Administration for Internal Affairs and Police was added. The increase in numbers was accompanied by a steady strengthening of the functions of the central departments, in relation to the Länder. Their original weakness was largely a consequence of the extraordinary degree of independence enjoyed by the regional Soviet Commanders and their subordinate German regional administrations. Unlike the zonal administrations in the British zone, they lacked both executive authority over the Länder and the power to make laws immediately binding upon all. But the legal and factual authority of the central administrations in the Soviet zone appears to have increased rapidly from the end of 1946 onwards. In November, 1946, the Administration for Labour and Social

<sup>8</sup> This appears to bring development in the Soviet zone of Germany into line with those of Soviet Russia and the new Yugo-Slavia. In both, a federal system has replaced a strongly centralised system. The predominant achievement of these constitutions lies in the equality given through the federal structure to the different races and nationalities composing the state. This factor is much less in Germany. But in all three cases the apparent federal autonomy and diversity is more than countered, in the vital fields of politics, economics and education, through the predominance of one party. In Soviet Russia and Yugo-Slavia it is a legally recognised predominance; in the Soviet zone of Germany it is so far a *de facto* predominance ensured through the suppression of the one party which could challenge this predominance.

Policy was given the power to issue orders to the regional governments while the Länder were instructed not to issue laws of fundamental importance in the field of labour and social policy, without previous consultation with the central administration. In February, 1947, the Soviet military government at Karlshorst issued instructions to the effect that the regional governments should 'voluntarily' accept the orders of the Central Administration for Industry. The trend has been much clearer than in the Western zone: away, from decentralisation, towards centralised direction and planning. This was undoubtedly facilitated by the greater political uniformity of the different Länder in the Soviet zone. The development of the present central administrations in the Soviet zone. The development of the present central administrations in the Soviet zone, especially the addition of departments for Public Health, Education, Justice and Interior (including Police), indicates a far closer approach to a full-fledged central government than has been attempted in the Western zone. In June, 1947, the formation of an Economic Council was announced which consists of the Heads of the Central Administrations concerned with economic affairs, except for the chairman, who is the chairman of the Economic Committee of the S.E.D. This development indicates a desire to counterbalance the Western fusion. It also gives another proof of the predominant position of the S.E.D.

#### U.S. ZONE

In the field of constitutional reform the American zone embodies the most definite constitutional theory. American policy has been determined by two guiding factors: first, the speediest turning over of responsibility to democratically constituted German states subject only to a very general policy supervision by American military government; secondly, the utmost regional autonomy compatible with the survival of a loosely federated German state. Immediately after the dissolution of SHAEF, in July, 1945, American military government proceeded with the reorganisation of its zone into three Länder. Unlike the major part of the British zone, nearly the entire U.S. zone had a centuries-old tradition of independent statehood. For more than a year before the constitutions of the Länder were adopted by elected Parliaments and ratified by plebiscite,

these Länder had functioned on the basis of nominated cabinets and nominated councils. The foundations of a confederation were created by the constitution of the Länderrat. This Länderrat consists of the three Prime Ministers, who meet periodically to discuss major matters of common concern and to decide on the adoption of parallel legislative and administrative measures in their Länder. Unanimity is required. One of the first joint legislative measures was the denazification Law for the U.S. zone adopted in March, 1946. The Länderrat is divided into a number of functional sub-committees presided over by the functional ministers of the three Länder. These have a large degree of autonomy but for major measures must refer to the Prime Ministers. Gradually the Länderrat built up a full-time secretariat with a permanent staff which was however plainly inadequate for any major planning tasks for the U.S. zone as a whole.<sup>1</sup> At the same time the sub-committees of the Länderrat dealing with these functions were dissolved.

The tendency towards decentralisation was underlined by the declared American preference for unplanned economics and 'free enterprise.' The American authorities discouraged the formation of anything resembling an economic planning authority for the U.S. zone. This later increased the difficulties of economic planning by the bi-zonal agencies.

The new constitutions of the three Länder were enacted in quick succession by the elected constituent assemblies, during the last week of October, 1946, and ratified by plebiscite during the following two months. The constitutions follow the general pattern of the Weimar Constitution. They all constitute elaborate catalogues of 'Grundrechte' on the pattern of both the American and the Weimar constitutions. The general value of such catalogues of not enforceable rights is doubtful; but in a Germany in which these basic rights had been completely demolished by the Nazi regime, their solemn re-assertion is no doubt a matter of considerable psychological value.

<sup>1</sup> When the bi-zonal fusion of September, 1946, produced the formation of five functional bi-zonal administrations, it was found that the personnel had to be drawn largely from the British zonal administration.

Unlike the constitutions in the Soviet zone, those of the Länder in the U.S. zone show considerable differences. This is a natural consequence of their genuinely democratic foundation. Different political and religious tendencies in the three Länder are reflected in the relative strength of parties and therefore in the constitutions. Most of the basic features are, however, common to all three constitutions. The legislative power is vested in a unicameral parliament elected by the people according to the principles of proportional representation. Bavaria alone—in accordance with Catholic ideas on the corporate state<sup>2</sup>—has created a senate composed according to corporate principles, and representing ten different functional groups. This senate has the right to initiate legislation and to give an opinion on bills presented by the government, at the request of the latter. Such a request must be made in the case of laws affecting the budget, amending the constitution or designed to be submitted to plebiscite. All three constitutions provide for governments chosen by the Ministerpräsident, who is elected by Parliament, but the Bavarian Constitution vests stronger powers in the Ministerpräsident, who combines certain functions as the head of government with that of head of the state.<sup>3</sup> All constitutions provide for plebiscites following the request of a certain proportion of the voters.

Some salient features of the constitutions mark an advance on pre-Nazi constitutions. All constitutions admit, though with considerable differences of emphasis, the principle of public ownership in minerals, public utilities and certain other industrial enterprises of particular general importance. The Hessen Constitution, under stronger socialist influence, goes much further in this respect than the other two. All constitutions admit the right of employees and workers to take a constructive part in the management of economic affairs.

All constitutions provide for the establishment of constitutional courts to decide on the constitutionality of laws passed by

<sup>2</sup> As proclaimed by the Pope in his Encyclical Quadragesimo Anno (1931) and adopted in the constitutions of Eire and pre-Nazi Austria.

<sup>3</sup> The Bavarian draft provided for a special State President. This proposal was defeated by a very narrow majority.

parliament, about constitutional disputes between the government and other public organs and about the infringement of constitutional rights by public authorities. This follows the American pattern, and it also mitigates one of the most dangerous features of the Weimar period: the right claimed by the ordinary courts to decide on the constitutionality of an Act of Parliament, a dangerous arrogation used not infrequently for the sabotage of progressive measures distasteful to reactionary judges.

Special provisions safeguard democracy against its potential enemies—their absence was fatal to the Weimar Republic. Thus, the Hessen Constitution provides categorically that 'No change of constitution of whatever nature may touch the basic democratic idea of the constitution and the republican and parliamentary form of the Government. The establishment of a dictatorship, whatever form it may assume, is prohibited. Motions to initiate laws conflicting with the provision of the foregoing paragraph of this article shall not be voted upon; laws enacted in spite of this provision shall not be prepared for promulgation. Laws promulgated in spite of this shall not be followed. Nor may this article itself be a subject of an amendment of the Constitution.'<sup>4</sup>

While German nationality is at present inevitably a somewhat theoretical notion, the Bavarian Constitution provides a fully fledged Bavarian nationality, a provision which was the subject of a critical reservation by the American Deputy Military Governor.<sup>5</sup>

The pattern of constitutional reform in the American zone is therefore clear. It is based on full political democracy in the American sense and on the utmost autonomy of the single Land. Coupled with the existence of the Länderrat, it envisages a very loose form of German federation. American aversion to economic planning for a region bigger than a single Land has been responsible for the original weakness of bi-zonal economic administration. This

<sup>4</sup> The laudable intention to outlaw a revival of Nazi or other undemocratic movements has probably outstepped legal reason. It is difficult to see how provision not to vote on certain motions or not to obey laws enacted in spite of the provision can be enforced. At most the decision on whether a law valid might be the subject of a judgment by the constitutional court.

<sup>5</sup> See above, p. 63.

view has been underlined by Secretary of State Marshall at the Moscow Conference.<sup>7</sup>

#### CONSTITUTIONAL REORGANISATION IN THE BRITISH ZONE

Constitutional reorganisation in the British zone had to start from largely different premises. The major units of the British zone were provinces of the dismembered Prussian state. They had been administrative districts but not states. This did not apply to some smaller units such as Oldenburg, Braunschweig and Schaumburg-Lippe and to the City State of Hamburg. With the exception of Schaumburg-Lippe, with a total population of 50,000, these old German dynastic areas were in fact reconstituted as Länder, but, from the beginning, their smallness and weakness compelled some link with the bigger provinces. The eventual formation of Land Niedersachsen was the result of prolonged experiments. For about a year before the formation of Land Niedersachsen a joint economic administration for the same area had attempted to establish economic unity between these different units. It was faced with the same difficulty of creating unity of economic administration between autonomous political units which later confronted the bi-zonal administrations.<sup>8</sup> On the other hand, a laudable and voluntary German attempt was made to create greater economic unity between the large industrial and commercial city of Hamburg and the overwhelmingly agricultural region of Schleswig-Holstein, by the formation of 'Wirtschaftsrat Nord' which dissolved itself after the effective establishment of a zonal economic administration. One of the projects for the reform of the British zone was the

<sup>7</sup> Since this was written, the text of the Constitutions adopted in the three Länder of the French zone (May, 1947) has become available. They are very similar in structure and substance to those of the U.S. zone. Owing to the predominance of the Christian Democrats, there is strong emphasis on Christian principles. Württemberg even proclaims the compulsory denominational Christian school. Südbaden stipulates a special 'Badenian' nationality (like Bavaria). The socialisation clauses in all three constitutions are permissive and rather vague. The constitutions must be read subject to the very real limitation of democratic freedom imposed by the French, which forbids any public discussion of German unity, the Saar question, or food difficulties.

<sup>8</sup> This short-lived 'Wirtschaftsverwaltung Niedersachsen' deserves to be remembered for an interesting constitutional and social experiment. It consisted of four representatives of Hanover—by far the biggest of the constituent units—one each of the three Länder in the area, and one representative each elected by the Chambers of Commerce, the Handicraft Chambers, the Trade Unions and the Consumers' Co-operatives.

combination of Hamburg and Schleswig-Holstein in one area. In the end they were made into separate Länder.

The present constitutional reorganisation of the British zone is a reasonable one, except for the already mentioned excessive weight of Nordrhein-Westfalen. More significant, however, is the shift which, since the autumn of 1946, has taken place in the basic conceptions of federal government. In the British zone, as everywhere else, administrative reorganisation started from the bottom upwards and for the first year the former provinces and Länder constituted the highest units of government, for purposes of general administration as well as for education, justice, taxation and every other function of government. They collected, for example, former Reich taxes as they had to meet the bulk of former Reich expenditure. From the autumn of 1945 the British authorities proceeded cautiously with the transfer of certain responsibilities from the British to the German side. The first step was the creation of a Zonal Advisory Council designed to give provisional representation to German public opinion. It was originally a combination of administrative and political leaders. It consisted of the heads of Land and Provincial Governments, together with the leaders of political parties, trade unions and other sections of public opinion. Later the chiefs of the functional zonal administrations (for economics, labour, food, transport) were added. The Council works mainly through sub-committees, and it has had an important share in some of the major measures taken in the British zone since its constitution. It has given advice, among other matters, on the constitutional reorganisation of the zone, on the new electoral system and on the competences of the new Länder as and when they were formed. The Council, apart from giving advice as required by the Deputy Military Governor of the British zone, has also repeatedly passed resolutions on its own initiative, on such matters as coal production, the deterioration of the food position, the danger of deforestation through the timber export programme, and the revival of German exports. It has served as a moderate but increasingly frank organ of protest against the progressive deterioration of conditions in the British zone. The Council was reorganised in April 1947 when it was given the additional function of advising the Control Commission on all new laws and ordinances,

of zonal and bi-zonal significance (excluding economic matters). The Council now consists of thirty members all nominated by the Land Parliaments, on the basis of the political strength of the different parties, and, in proportion to the size of the population, with a minimum of three seats for one Land. This, as in the case of the new bi-zonal Economic Council, means a departure from the principle of absolute equality of all Länder, which would be strained beyond reason by equality of vote for (say) Bremen with 400,000 and Nordrhein-Westfalen with nearly 12,000,000 inhabitants. The Prime Ministers of the British zone have recently been encouraged to form a Länderrat as in the U.S. zone. The most significant development in the British zone, however, was the creation of a series of zonal authorities, between the end of 1945 and September, 1946. It was at that time a definite British conception that the utmost planning and co-ordination had to be achieved in such vital fields as agriculture and food, trade and industry, transport and labour. As unified administration for Germany became increasingly remote, zonal authorities instituted without prejudice to eventual political reunion were considered the next best substitute. These zonal authorities operated singly, on functional lines and with only loose co-ordination; they did not form parts of a coherent zonal government. Yet they marked a decisive advance over the increasingly intolerable economic disruption in an already difficult zone. The zonal authorities, after an advisory stage, received the clear power of direction over the Länder and projects in their zone. But as distinct for example from the centralised machinery of the financial administration under the Weimar Republic, or of most administrations under the Nazi regime, the executive apparatus remained with the regional units. It was for the zonal authority to lay down, among others, the general principles of planning, the allocation of priorities in production, raw materials, the principles of price control. It was for the Länder to carry out the instructions by their own executive apparatus and with a considerable amount of freedom of decision.

The zonal authorities thus became the prototype of an eventual central administration, exercising powers of direction over regions with a high degree of autonomy. The reaction of the Länder in the British zone to the zonal authorities was not unanimous; while

they strongly stressed the need for close consultation between the zonal and the regional authorities and, in particular, for elasticity in the regional sub-allocation of raw materials and consumers goods, there was little opposition either from the left or the right to the principle of zonal authorities as such, pending the establishment of a central German administration. But British policy was torn between the long-term objective of utmost decentralisation and the immediate need of strong economic planning powers.

Towards the end of 1946 British Military Government issued an Ordinance on the provisional powers of the Länder in the British zone which reflects this dilemma.<sup>9</sup> The Länder are, in principle, competent in all matters except those reserved in four Schedules.

Schedule A states subjects permanently reserved to a higher level, such as Defence and Foreign Affairs; Schedules B, C and D enumerate matters reserved to military government, either as a matter of allied policy (such as reparations or timber felling) or pending the establishment of a German Government. Some of the subjects in the latter category are, at present, delegated to zonal or bi-zonal authorities (*e.g.*, price control or direction of industries). While the distinctions between the four Schedules seem unnecessarily sophisticated, their combined result is a drastic though partly temporary limitation of Land competences, which stands in marked contrast to the enormous governmental and administrative apparatus set up with the creation of the new Länder.) The public, with grim amusement, watched the 'inflation of ministers' equipped with titles, secretaries and salaries far in excess of their real functions.<sup>1</sup> The Minister of Reconstruction, for example, battled for control of building materials with the bi-zonal economic administration. As a programme for future development, Ordinance No. 57 gives a reasonable though partly nebulous scheme of distribution of competences between federal government and the member states. The necessary severe restriction of the powers of the Länder in the present emergency situation shows that the

<sup>9</sup> See Appendix, p. 280.

<sup>1</sup> At a Berlin cabaret, in December, 1946, two people on the stage discussed an imaginary exhibition to be opened by a minister. One of them, advising the other, suggested that the minister ought to start by thanking the military government authorities for their assistance. To the question what the minister should thank military government for, he answered, 'For my being a minister.' This brought by far the biggest applause of the evening.

institution of four fully fledged governments in the zone was probably premature.

### THE BI-ZONAL FUSION

Hardly had the zonal authorities begun to get into their stride when two concurrent developments cut short their life. On the one hand British ideas were moving more and more towards emphasis on Land autonomy and a reduction of zonal or central governmental functions to a minimum.<sup>2</sup> The conversion of the former Prussian provinces into Länder meant an increased apparatus of ministries. At the same time the Americans took the initiative in pressing for a bi-zonal economic fusion with the British zone, as a partial substitute for the union of four zones which seemed to be becoming more and more remote. With this came the impact of American constitutional conceptions, which further deflected the British authorities from their original conception of zonal authorities, equipped with sufficient planning powers, towards a confederate structure.

A series of bi-zonal fusion agreements on identical lines were signed in September, 1946, covering the administrations for economics, food and agriculture, transport and finance.<sup>3</sup> A similar agreement for manpower was planned but not carried out.

The first difficulty arose over the question of who was to sign the agreement. In reality, the agreements were imposed upon the Germans by two of the four military governments, for reasons of international and occupational policy. But the Americans, in pursuit of their general policy of presenting at least the appearance of a revival of German self-government, persuaded their British colleagues to have the agreement signed by the German representatives for the two zones. These were the functional Ministers of the participating Länder.<sup>4</sup> The German delegates were generally in sympathy with the abolition of boundaries between the zones, but they were certainly not agreed on some of the principles. One group, led by the head of the zonal economic administration in the

<sup>2</sup> Cf. Mr. Bevin's speech of October, 1946.

<sup>3</sup> The last of these differed at first from the first three in being purely advisory but was subsequently made executive.

<sup>4</sup> At first six, later eight (after the constitution of Hamburg and Bremen as Länder). Bremen counts as part of the U.S. zone so that each zone is represented by four Länder.

British zone, Dr. Agartz, a socialist leader, strongly objected to the excessive decentralising tendencies sponsored by some of the Southern German states and supported by American military government. They feared that this might paralyse the minimum economic planning powers necessary to run the two zones effectively.

The second problem in these agreements was the compromise between centralist and confederate conceptions and the parallel compromise between planning and *laissez-faire* conceptions. This corresponded broadly but not entirely to a difference of approach between the Northern and the Southern zones and between the British and American military governments. On the German side, this contrast was quite marked in the early stages when the majority of ministers from the Southern zone were Christian Democrats. Subsequent elections in the U.S. zone strengthened the Social Democrats and, as a consequence of party bargaining, the unfortunate position arose that all ministers in the economic administration, the biggest of all, became Social Democrats while the other administrations were essentially conservative. On the allied side, the British, towards the end of 1946, were only too ready to sacrifice their original conceptions to American ideas, in the hope of economic relief for the hard-pressed British zone. The result was that certain basic problems and differences of approach were glossed over.

The compromise was on the following lines: the British abandoned the economic zonal authorities.<sup>5</sup> They conceded to the American view the confederate composition of the directing bi-zonal administrations, namely, committees of six (subsequently enlarged to eight through the inclusion of Hamburg and Bremen), consisting of the competent ministers of the different Länder. The committees were thus conceived as confederate councils, but with this significant difference, that they had a full-time non-voting chairman<sup>6</sup> and that the decisions were to be made by simple majority. Since the number of voters was either six or eight, this meant in fact a majority of two, but it certainly constituted an advance over the unanimity

<sup>5</sup> The zonal administrations for justice and manpower remain. Manpower policy is, of course, intimately connected with economic planning, and the continued exclusion of manpower from bi-zonal direction creates many additional problems.

<sup>6</sup> A conception taken from American Company Law.

principle typical of confederate constructions, and of many international associations, such as the League of Nations.

The bi-zonal administrations were provided with full-time administrative departments headed by their chairmen.<sup>6a</sup> These were, in fact, slight modifications of the defunct zonal authorities of the British zone which provided a trained staff and the continuity of administration. Obviously much depended on the strength of these administrations and the influence of the chairmen. But the agreement sacrificed clarity for speed on a vital point, namely, the enactment and enforcement of the decisions. The agreements gave the committees the power to 'enact directives valid for the participating Länder.' But the executive legal apparatus rested entirely with the Länder. It was obvious that the decisions of the committees would come to nought unless they were promulgated simultaneously and in identical form in the different Länder. The committees were given competence in matters vital for emergency planning, such as the production and distribution of goods, price control, transport, food production and distribution, and the principles of economic legislation. Some of the more particularist states, notably Bavaria, used the weakness of the legal position for obstruction. They insisted on the right to issue the necessary laws in their own time and at their own discretion. This was, of course, incompatible with the basic idea of bi-zonal executive administrations. The latter interpreted their functions as implying the necessary legal powers of ordinance within the matters allocated to them. At this point the more recalcitrant Länder were reinforced by muddled thinking on the side of both British and American military governments. The British lawyers insisted that executive administrations without constitutional democratic bases could not issue ordinances smacking of legislative powers. Yet it was the Allies themselves who refused to provide the bi-zonal administrations with a political basis such as a bi-zonal parliament, in order not to create a fully-fledged Western state. In every modern state, certainly in Great Britain, vast powers or ordinance are given to ministers. In the absence of a parliament, it was for military government to delegate the necessary powers to the bi-zonal agencies.<sup>7</sup>

<sup>6a</sup> They were dispersed over four different centres, hundreds of miles apart, to avoid the impression of a 'Western Capital.'

<sup>7</sup> Cf. my letter in *The Times*, May 8, 1947.

The Americans, on their side, complicated the situation by insisting that the Prime Ministers of the Länder in their zone should have to approve the decisions of the bi-zonal administrations. They were to do so by virtue of a surviving emergency power and not—as was demanded by their constitutions—as constitutional parliamentary ministers with the approval of parliament. Thus the Americans sacrificed democracy to Land autonomy, while the British chased after a theory of separation of powers obviously inapplicable to the situation.<sup>8</sup>

Two fatal weaknesses were thus revealed: the creation of a limited 'functional' fusion without a state basis and the effect of the confederate principle where the emergency demanded swift and effective planning on a higher basis. In this, as in most fields of human activity, it proved impossible to have it both ways. Compromise could disguise but not eliminate the vital decision between the strengthening of higher authorities for the sake of efficient planning, and the granting of full autonomy to the different Länder within the area.<sup>8</sup>

It soon became evident that the main purpose of the agreement, the pooling of resources between the two zones, did not materialise. Bavaria proceeded to dissent from every single decision and, although compelled by the agreements to comply with majority decisions, simply failed to deliver the food which the North needed, in return for its supplies of coal and steel. In April, 1947, Bavaria, instead of 2,387 tons of meat only delivered 330 tons.

The blatant weaknesses of the original fusion agreement, and the catastrophic deterioration of the economic situation, led to a far-reaching revision on June 2, 1947.<sup>9</sup> The new agreement abandons the fiction of having been made freely by Germans, like the original one, but it is squarely an agreement between the British and American military governments.

It takes a big step towards the creation of a political democratic basis for the bi-zonal agencies, by instituting an Economic Council.

<sup>8</sup> The same problem led, for example, in Australia to the transfer of taxation powers from the states to the Commonwealth, as an aspect of its defence powers. Similar issues have arisen in the U.S. over the New Deal, and in Canada over Social Security legislation by the Commonwealth.

<sup>9</sup> The text of the new agreement is published below, p. 289.

The 54 members of this Council are to be chosen by the Land parliaments in proportion both to the population (though with no less than one representative per Land) and to the division of political opinion in each Land. As a result, there is at present an almost complete balance between the left wing parties (Socialists and Communists) and the more conservative parties. The Economic Council—which thus has the character of a Confederate Economic Parliament—decides by majority vote. Its functions include the general direction of the economic reconstruction of the two zones and the promulgation of Ordinances on a large number of specified economic subjects which cover the field of the five functional bi-zonal administrations under its direction. But all its Ordinances are subject to the approval of the Bipartite Board. Except in certain cases where, with Bipartite Board approval, the Economic Council, or its delegates, are themselves given the power to issue implementing regulations pursuant to the Ordinances, it is for the Länder to implement promptly the Ordinances.

The bi-zonal agencies themselves are preserved. Their heads, who were previously the non-voting chairmen of the Bi-zonal Committees, are turned into 'Executive Directors,' that is to say, they shed their semi-political function and become high civil servants equivalent to secretaries of state.

Between the Economic Council and the Executive Directors, as heads of the permanent administrations, an Executive Committee is interpolated. This is a full-time co-ordinating body which has eight members, one appointed by each Land government. This Economic Committee exercises the immediate supervision over the functional administrations. Being full-time and much smaller than the Economic Council, and directly connected with the Land governments, it may well develop into the most influential of the three layers of bi-zonal administrations which are now concentrated at Frankfurt.

The practical effect of the new scheme should be judged in conjunction with a basic Ordinance relating to production allocation and distribution of goods and raw materials, published simultaneously. This Ordinance empowers the Executive Committee for Economics (which, in due course, will be absorbed in the

new organisation) to establish general policies 'to be announced in the form of decisions' governing the production, allocation and distribution of goods and raw materials. Except for the power 'to allocate directly, by executive orders, such scarce basic commodities as may be determined by the Committee to specific industrial purposes and among the several Länder.' The bi-zonal administration can issue its 'general policy decisions' only in the form of executive orders directed to the different Länder. They become binding on persons only upon implementation by the Länder, which are directed to issue such regulations promptly.

In what way does the new scheme constitute an advance over the previous one? The creation of a politically responsible Economic Council goes some way towards remedying the great weaknesses of administrative agencies without constitutional basis. But, as regards some of the most critical problems, the new scheme constitutes no advance, while it makes the whole machinery even more complex and difficult to work.<sup>o</sup>

On the policy level, two authorities will be concerned: the new Economic Council and the Anglo-American Bipartite Board. The former controls two executive authorities, the semi-political Executive Committee, and the permanent administrations headed by the Executive Directors. The constitutional and practical relation between these three layers of authorities is most extraordinary. Given the confederate parliamentary structure of the Economic Council, one would have expected the Executive Committee to be fully responsible to it, like a cabinet to a parliament. Instead, its members, while 'subordinate' to the Council, are appointed and paid by the Land governments, which naturally will have the strongest influence on their appointees. This dual responsibility, to the Länder separately and to the confederate

<sup>o</sup> The apprehensions expressed in the following pages were, unfortunately, amply confirmed as this book went to press (end of July). The allotment of votes on the Economic Council by the allies gave the Christian Democrats a majority of one. The Social Democrats dominate the Executive Committee, composed on a Land basis. In retaliation the Christian Democrats, through the Council, secured the appointment of their nominees as Executive Directors of all five agencies. If the resulting ludicrous situation reflects little credit on German political maturity, the greater blame attaches to the allies who forced upon the Germans a scheme devoid of elementary political and constitutional reason.

Council, is not only without precedent but may create considerable complications. The Executive Committee, as such, seems to be a hybrid between a co-ordinating Committee and a cabinet. A committee of eight in the function of a composite minister is put above five executive agencies, headed by non-political directors comparable to permanent under-secretaries.

In the third place, the old problem whether to give direct executive powers to the bi-zonal administration, or to make it act through the Länder, has been solved by a bad compromise. Although one should have thought that the double representation of the Länder, in the Council and the Committee (not to speak of the Zonal Advisory Council and the Länderrat), gave the Länder enough voice, bi-zonal decisions will still have to be implemented by eight distinct Land ordinances, except for certain cases authorised by the Bipartite Board. One such case is the power of the bi-zonal economic authorities to allocate certain scarce basic commodities directly. The distinction between these and other commodities will give rise to many a controversy and conflict of competence. In the present plight, the bi-zonal authorities might well claim that practically every commodity is scarce, but that would bring protests from some of the Länder, alleging violation of the spirit of the Agreement.

Lastly, there is no real progress in the delegation of responsibility from military government to German authorities. Every single Ordinance will still require bipartite approval. Yet, with the constitution of a representative economic parliament, the main reason for withholding the power of ordinance from the bi-zonal authorities has gone. Even if the allies must reserve to themselves such matters as imports or certain coal allocations, only a definite delegation of powers can give the Germans a real sense of responsibility. They should, for example, be told of the quota of coal reserved for export and be fully responsible for the allocation of the rest, e.g., between industrial and domestic needs.

Almost every clause of the new Agreement shows the signs of unresolved conflicts between opposing conceptions: firstly, between the policy of giving the Germans broad responsibility, under general allied policy and security control, and the policy of direct control over every act; secondly, between the British policy

of a minimum of central economic powers and the American policy of regionalism at any price; thirdly, between planning and *laissez-faire*. The result of these unresolved conflicts is compromise and complexity.

With every reorganisation, Germans witness another increase of committees, directors, councils, and, with it, of salaries, expenses and titles. This is the price of an excessive decentralisation policy. It is, of course, contrary to the general development of federal planning powers everywhere else. Not only does this mean a preservation, in the field of political and administrative reorganisation, of the original allied policy of doing nothing to restore any efficiency in the German economy, a policy long discredited by the extent of the economic catastrophe. It also increases the sense of isolation and bewilderment among Germans, the feeling that they are the object of a costly and artificial experiment, at a time of desperate plight. It is no less costly to the Allies and in direct conflict with the policy of economic integration advocated by Mr. Marshall in his Harvard speech of June, 1947.

The new bi-zonal structure can at best be another transitional experiment. Unless it gives way to an administration for the whole of Germany, it must lead to a new, bi-zonal state. In such a state, the present three layers of economic administration must immediately be replaced by two; a democratic legislative, and an executive. Zonal Advisory Councils can disappear, the economic planning powers must be clearly defined. The political responsibilities must be broader and the functions of military government confined to general policy control.

#### PLANS FOR THE FEDERAL RECONSTRUCTION OF GERMANY

The experience of the bi-zonal fusion gives an idea of the immense difficulties facing the federal reconstruction of the four zones.

Between Britain and the U.S.A. there is at least basic agreement on the principles of political democracy although not on the principles of economic planning. France favours the utmost decentralisation in general, together with the political separation of the Rhineland,<sup>1</sup> and separate international administration of the Ruhr. Soviet Russia favours strong economic planning without which socialisation

<sup>1</sup> Cf. M. Bidault's proposals at the Moscow Conference on April 10, 1947.

is very difficult to accomplish. She has also frequently proclaimed her opposition to federalisation, though the Russian zone consists of Länder like the other zones.

The different conceptions were only partly revealed at the Moscow Conference in April, 1947. The constitutional schemes of the four powers proved less divergent than the deeper underlined differences on social and political principles. The British Government put forward a proposal confining the federal government to responsibility for foreign affairs, nationality, emigration, the implementation of treaties and the fundamental principles of law; for foreign trade, customs, transport and communications; for currency and some limited control of taxes. The federal government is further to have power 'to lay down fundamental principles for legislative implementation and execution by the Länder,' broadly in all matters which are now the subject of zonal or bi-zonal administration, i.e., the planning of food and industrial production, rationing, price and wage control, labour organisation and direction, and social insurance. The plan suggests a central government with a constitutional President and two chambers, one popularly elected, the other elected on the basis of equal representation for each Land and with powers of absolute veto on constitutional matters and of a suspensory veto on other legislation. A Supreme Court is to be established to safeguard the constitution.

The central administrations envisaged in the Potsdam Agreement are to form the beginning of the central government. Mr. Bevin repeatedly expressed his opposition to a new centralist Germany and his support of the principle of delegation of powers, not downwards from the centre, but upwards from the Länder. He also strongly objected to a Russian proposal to allow the German people to choose by plebiscite between the centralised or federal forms of government: 'I don't mind whether the Germans choose to be conservative, socialists or communists or anything else so long as they are peaceful Germans. I do mind, however, whether or not enormous power is to be automatically handed over to a central government.' The American proposals, less detailed, were similar, but there were two significant differences. Firstly, the provisional German government is to be composed of the heads of the Länder governments (in accordance with the confederate conceptions

consistently advocated by the Americans in the zonal and bi-zonal administrations). Secondly, the constitution eventually to be drafted is to be 'German in origin and consistent with democratic principles and political decentralisation.' Only by virtue of the constitution and after adoption by the Länder is a central government to assume authority.

The Russian proposals also envisage the creation of a temporary central government and the restoration of Land parliaments.<sup>2</sup> West They also agree with the principle of decentralisation and propose, as a first step, central administrations for finance, transport, communications and foreign trade. As for the freedom of choice to be given to Germans, the Russian proposals are nearer to the British than to the American proposals. A temporary constitution is to be drafted by the Control Council with the help of German democratic bodies (including Trade Unions) and the representatives of the Länder. On the basis of this temporary constitution, elections are to be held to form a temporary government. The permanent constitution is to be ratified by the people. The relation between these proposals and the subsequent Russian proposals for a plebiscite of Germans on the question of central or federal government is not quite clear.

The Russian proposals are thus considerably more cautious than the draft constitution of the S.E.D. which has been discussed earlier.

The French proposals go furthest in the direction of a confederate rather than a federal government. They provide for certain federal ministries—for foreign affairs, finance, food, transport and communications. But for the vital functions of economics and agriculture they only propose a Confederate Council composed of the ministers of the different states. The only federal parliamentary institution is to be a Federal Council called 'Staatenhaus' composed of the representatives of the states, but this council is to decide by majority vote. Apparently the economic and agricultural councils must submit their deliberations for decision by this Federal Council where legislation is required. As regards the distribution

*French*

<sup>2</sup> As shown above, all four powers have in fact created Land parliaments in their zones.

of competences, the French proposals clearly adopt the principle of the limitation of federal competences to specified matters. All matters not specifically assigned to federal competence belong to the Länder. Finally, the French proposals go beyond the proposals of the other three powers in basing nationality on membership of a federal state which would indirectly confer federal German nationality.<sup>3</sup>

In theory, the margin between these different proposals is not unduly wide. Both the British and U.S. proposals follow the Bundesstaat pattern with strong constitutional guarantees and residuary competence vested in the Länder.<sup>4</sup> The French want a Staatenbund, a fairly loose association of states with limited functions. The Russian proposals are closer to the British and U.S. plans than might have been expected. Despite Mr. Molotov's protest against federalisation, they envisage a Bundesstaat, with both central and federal Parliaments, and an interim administration on the lines of the Potsdam Agreement. Unfortunately there is less agreement on the vital question of the degree of economic planning powers to be vested in the centre. Yet this very matter had already proved to be the fatal weakness of the bi-zonal fusion between the British and U.S. zone. The vesting of basic economic planning powers in a central government inevitably brings with it a certain danger of concentration of power. This danger was fatal in the case of the highly industrialised, disciplined and war-minded Germany of Nazi days. In the weakened, disorganised, impoverished and divided Germany of 1947 the danger is the opposite one. At a time when states with an ancient liberal tradition, such as Great Britain or France, are compelled to vest increased economic planning powers in the government to fight economic emergencies and ensure fairness of distribution, the allies have evaded this vital issue in their plans for Germany.

Judged by the experience particularly of the British zone but also of the Soviet and American zones, there can be only one acceptable solution to the problem. The common policies outlined in the Potsdam Agreement include industrial production and allocation, agriculture, wages, prices and rationing, foreign trade,

<sup>3</sup> This is the principle which prevailed in Germany until 1934.

<sup>4</sup> As in the U.S. and Canadian Constitutions.

currency and banking, central taxation,<sup>5</sup> communications and transport. All these functions are now included in the competences both of the central administrations for the Soviet Zone and the bi-zonal administrations for the U.S.-British zone. This represents the absolute minimum of central competences necessary to prevent chaos in an economy of extreme scarcity. The economic planning powers must include the power to issue the appropriate ordinances and regulations—under military government supervision, pending the constitution of a proper parliamentary foundation. The present system of issuing directives to a number of different Länder makes for delay, procrastination and misunderstanding.

The executive machinery, on the other hand, should remain with the Länder. This would in itself compel the central authorities to seek the closest contact with the Länder, as it would ensure the utmost delegation and decentralisation of functions. Under a general plan, the sub-allocation of goods and materials should be left to the Länder, working in close association with the different organisations of industry and workers. After many experiments, this was the scheme which began to work effectively and satisfactorily in the British zone, when its life was cut short by the hasty fusion of the two zones.<sup>6</sup>

The British proposals at Moscow, by vesting basic economic planning power in the Federal Government, while leaving their implementation and execution to the Länder, indicate the only acceptable compromise. The restoration of a centralistic Germany must be avoided, for security, political and cultural reasons; but, as the bi-zonal fusion has already shown, the compelling necessities of economic direction and a pooling of resources can be ignored only at the cost of chaos, iniquity of distribution and an increase in the economic burden which the administration of Germany imposes upon the allies.

<sup>5</sup> The distribution of taxing powers must broadly correspond to that of economic functions. The concentration of all taxing powers in a central government would, sooner or later, destroy any independence of the Länder. The British proposal—in accordance with the present position in the British zone—allots Income and Corporation Tax, Death Duties and Customs to the centre. The remainder (including Property and Turnover Tax) is allotted to the Länder which determine municipal taxes. This may endanger the independence of local authorities. Land tyranny may be as bad as Reich tyranny.

<sup>6</sup> See above, pp. 86, 89.

## CHAPTER 6

### REBUILDING OF A GERMAN ADMINISTRATION

THE allies had to solve a double administrative problem. They had firstly to consider the reform of Germany's administrative structure so as to eliminate the danger of aggressiveness, over-centralisation and anti-democratic tendencies. They also had to solve a personnel problem of baffling magnitude.

The Potsdam Agreement had laid down the decentralisation of government administration as one of the basic principles of allied military government. In this, as in every other field, the increasing divergencies between the four zones produced vast differences in the implementation of this principle.

Reference has already been made<sup>1</sup> to the costly lesson learnt by the allies after the first world war when control of a section of the German administrative apparatus in western Germany had proved ineffective, partly because of its allegiance to the central government in Berlin. Between the world wars the powers of central government had been steadily strengthened. This was partly due to the world-wide trend towards increased planning; partly to the generally strengthened unitarist tendencies in Germany. The most decisive development in this direction, however, was the centralisation of powers and the entire administrative apparatus under the Nazi regime, an essential part of its preparation for war and its iron control over German public life.<sup>2</sup>

The first factor which compelled a thorough re-orientation of this system under allied occupation was the collapse of the Reich as a coherent unit. Military government teams operated as district and regional teams. For the first twelve months the Länder or provinces had to be the highest administrative units. The Länder had to re-acquire the functions of which they had been deprived; the provinces had to acquire them. Opposite the regional military government teams, the German administrations, under the nominated

<sup>1</sup> Above, p. 14

<sup>2</sup> Cf. above, pp. 2-6.

Ministerpräsidenten of the Länder or the Oberpräsidenten of a province, formed departments of finance, internal affairs, education, transport, labour, food, economics. The Presidents of the Appeal Courts temporarily became Ministers of Justice for their region. The Länder became the highest planning and administrative units and, for the first year of occupation, life largely circulated within the boundaries not even of one zone, but of one Land or province within a zone. The Land is still the strongest centre of government, despite the tentative experiments made in the different zones with the establishment of higher authorities where further development is bound up with the constitutional future of Germany.<sup>3</sup>

#### LOCAL GOVERNMENT REFORM

A second and simultaneous step towards decentralisation and democratic regeneration was taken in regard to local government. Here the ways parted. In the Soviet zone essential unity between local government and the higher planning authorities was created through the factual predominance of the communists in their Land and the Socialist Unity Party throughout the zone, especially in the rural areas. The British, American and French Governments had to devise a revival of local government on the basis of local democracy by degrees. In all zones district elections preceded regional elections, as a first tryout of the new democratic process. The main effort had to be directed towards the revival of democratic forms of self-government. The Nazis had codified the law of local government for the whole of Germany.<sup>4</sup> Many of its principles were merely the embodiment of decades of reform projects. Among them were the provisions regarding the financial and economic administration of local authorities. Others were embodiments of radical Nazi principles, in particular of the leadership principle in local government. Local parliaments both in towns and rural districts were abolished. The mayors of towns and villages became the solely responsible leaders assisted by full time experts and nominated advisory councils. Before the code, two types of constitution had prevailed in Germany though with

<sup>3</sup> Cf. above, pp. 79 *et seq.*, 88 *et seq.*

<sup>4</sup> Deutsche Gemeinde Ordnung of January 30, 1935.

dozens of variations: in one type, prevailing in the Rhineland, the Mayor's position was equivalent to that of a headmaster in an English school; in the other he was merely the chairman of a committee. But in both types the administration was responsible to an elected local parliament. Smaller towns and villages, combined in rural districts, stood under the supervision of an important state official, the Landrat, who had the dual function of a state administrator and the head of a democratic self-governing organisation. In his latter capacity he was the chairman of the rural parliament and a separate staff of local government officials. It was only natural that in this dual capacity the power of the state often prevailed over the autonomy of self-government. The modern system of German local government, associated with the name of Freiherr vom Stein, dates from the beginning of the 19th century. It left much regional variety, and even in Prussia, the local government of the Rhineland, influenced by the French system, was very different from that of the Eastern provinces.

Vital to the German system of local government was the full time capacity and long term tenure of office of the chief officials. Except in very small towns and villages the mayor and his chief assistants were full-time officials appointed for a term and responsible to town parliaments until the latter were abolished by the Nazi regime. The usual term of office for the chief officials was twelve years, subject to renewal. The length of tenure tended to make the Oberbürgermeister of the major towns rather too powerful. But a large number of the ablest and most enterprising men in German public life came from local government, and it is significant that not one of the leading local government chiefs was a prominent Nazi, while some were among the leading anti-Nazis.<sup>5</sup>

The Americans and French did not interfere with the established system, apart from the abolition of the aspects of local government specifically associated with the Nazi regime. They provided nominated parliaments for towns and rural districts until the latter had elected representatives who could work out their own codes of

<sup>5</sup> Goerdeler, the chief of the July 20 Putsch, had been Mayor of Leipzig. Among other famous mayors were Petersen of Hamburg, Luppe of Nurnberg, Adenauer of Cologne, Luther of Essen, Brauer of Altona (now Hamburg), Reuter of Magdeburg, Lantenschlager of Stuttgart.

local government. These, to a large degree, restored the former regional divergences of local government on a democratic basis. The British Government proceeded differently. Its administration and Local Government Branch was determined to remodel German public life by the introduction of British forms of democracy. Foremost among them it considered the English tradition by which local government is represented by honorary elected councillors usually professing party allegiances while the actual administration is in the hands of non-political permanent officials, separate from the Civil Service of the state, though increasingly organised on parallel lines. British military government introduced this principle in the British zone of Germany. Like the Americans, the British authorities started by restoring the forms of local self-government, by nominating councils representing broadly the estimated strength of the different parties. But in October, 1945, the British Government announced a fundamental reform, subsequently embodied in the revised version of the Deutsche Gemeinde Ordnung, promulgated in Ordinance No. 22 of April 1, 1946. Mayors had henceforth to be honorary political functionaries with the title of Bürgermeister or Oberbürgermeister. The full-time head of the administration (equivalent to the Town Clerk) received the title of Stadtdirektor or Oberstadtdirektor. He, like all other civil servants, had to abstain from any political activity. Only in villages under 500 inhabitants was full-time honorary administration permitted. A similar dualism was introduced in the administration of rural districts. The Landrat became the honorary head, but a new administrative chief, with the title of 'Oberkreisdirektor,' was established.

By this administrative reform the British Control Commission created a vital divergence between local government in its own zone and that of the other three zones. From the beginning the measures aroused violent opposition amongst the vast majority of German parties and organisations. Opposition was directed mainly against the alien character of the reform, the duplication of the apparatus and the increase in cost. Each of the new heads of administrations became confronted with the choice between retaining his title and becoming the nominal honorary chief, or becoming the permanent head of the

administration but nominally the second in command. At least one of the ablest of the mayors solved the problem by becoming Oberbürgermeister in one of the other zones where this problem did not arise. The reform brought about a duplication of apparatus in a country already overloaded with administrators. It also brought a title inflation.<sup>6</sup> It has been aggravated by the desperate scarcity of capable administrators in present-day Germany. It has also created an instinctive opposition to a reform contrary to a great, though lately perverted, tradition of German local government. It finally raises the problem of the limits to which an occupying power should go in substituting its own traditions for another equally strong though different tradition. The English principle is time-honoured but has led to an increasing *de facto* predominance of the permanent official over the changing councils. Its operation is moreover entirely dependent upon the existence of a class of people who can take honorary office after having obtained professional security or retirement. This is becoming increasingly difficult to maintain even in England. All these traditions are absent in Germany. It soon became evident that either the Oberstadtdirektor, or in some cases, the Honorary Oberbürgermeister, became the effective head of the administration, and the other a puppet. The admitted objective of the reform was: (1) to create a non-political permanent staff, and (2) to reduce the supremacy of the mayor and the other chief officials. The first objective is of doubtful validity. The original British measure of precluding the entire Civil Service from political activity had to be rescinded. It became obvious that the renascent political life would be doomed to paralysis if civil servants of all types, schoolteachers, town officials, policemen, had to be politically inactive. The second objective could have been reached more easily and with less cost, by the reduction of the traditional terms of office, say from twelve to three or four years. It is not surprising that the Zonal Advisory Council has strongly requested the abolition of this reform which contrasts strangely with the British tradition of indirect government.

The Soviet zone, too, has a new local government code; but

<sup>6</sup> The naive provision, in the Ordinance, prohibiting the new officials from using their titles outside office, remained, of course, ineffective.

both in content and procedure it greatly differs from the new code for the British zone. In the first place, it is not a Military Government Ordinance. In line with a procedure frequently adopted in the zone, the code was drawn up by one of the Land governments and accepted by the Soviet Military Government as valid for the whole zone. In the second place, the code does not attempt to upset the traditional structure of German self-government except for the purpose of greater decentralisation.

The code itself is short and more in the nature of a constitutional document, supplemented by local government statutes passed in the different Länder. Its dominating principle is that of the sovereignty of the local government parliament (town or rural district). It elects the mayor (in towns) or the Landrat (in rural districts) and all the other chief executive officials, but it may dismiss them at any time. Both mayor and Landrat are the chiefs of the other executive members. Together they form an executive council, responsible to the assembly. The code goes to the opposite extreme of the British code, by laying down that the chief executive officials are appointed according to the party strength in the local parliament. A timely reform, on which the Soviet and British zone codes are in agreement, is the abolition of the dual function of the Landrat as a state official and a self-governing official. On the face of it the local parliament seems supreme and the principle of decentralisation implemented to the full, but two factors mitigate against it. In the first place, there is in this, as in other spheres, strong state control. The traditional organ of state supervision, as it existed in Prussia, Bavaria and, until recently, in Saxony, the Regierungspräsident, has now been abolished in the Soviet zone. Supervision over towns or rural districts resides in the Land government. That it exercises this supervision is shown, for example, by a circular issued by the Department for the Interior of the Province of Saxony (now Land Sachsen-Anhalt) in December, 1946, reminding mayors of their duty to obey orders from the higher authorities. The second factor which counters decentralisation is, the predominance of the Socialist Unity Party in the leading executive appointments. It is, in fact, the complete predominance of local government officials selected from that Party

which ensured decisive advantages to the S.E.D. in the rural districts and smaller towns during the Land elections. There are finally no limitations to the economic activities of the local authorities.

#### POLICE REFORM

Apart from the prohibition of political police agencies, by Control Council Law No. 31, the reorganisation of the police has been carried out by the zones separately. SHAEF directives—applied in both the British and U.S. zones—provided for the transfer of police functions from state control to local government control.<sup>7</sup> Here again, the motive has been the desire to avoid excessive centralisation which, after the last war, nullified the effect of so many allied control measures and contributed to Nazi Germany's war potential and totalitarian system. Both in the British and in the U.S. zones the police is now under the direction of the local authority, not of the state. Concurrently the police has been 'civilianised,' that is to say, it has been shorn of the quasi-military character perfected under the Nazi regime which made an interchange of officers and non-commissioned ranks between Army and Police quite easy. At first the police were entirely unarmed, but the difficulties of keeping public order have led in all zones to the limited provision of firearms for police on active duty.

The greatest difficulty in the execution of this plan has been the German conception of the police function, which is far wider than that prevailing in, say, Britain or the United States. The word 'Police' in the German tradition covers a multiplicity of public control and security functions, including such matters as price control, building control, sanitary control—functions which in Britain, for example, are carried out by civilian inspectors operating under different ministries and local authorities. Again it has been difficult to keep the proper border line between reforms demanded by military security or the need for suppressing Nazi principles, and reforms inspired by the wish to substitute the conquerors' system for the different though equally good system of the conquered. In one field at least the problem has already assumed serious proportions.

<sup>7</sup> This is apparent even to the casual visitor from the vast variety of new police uniforms, differing from town to town.

In the course of 'civilianising' the police, the executive supervision of price control has been taken out of the hands of the police force and put into the hands of civilian local government officers. This has unquestionably relaxed the strength of control and it is doubtful whether anything has been gained by it. As price control is more than ever linked with the supervision of black market activities, its exercise requires experience and authority which well-trained police possess.

In the Soviet zone the police is far more centralised. It is under the control of the different Land governments. Far more serious is the inclusion, in the new 'Gemeindeordnung' for the Soviet zone, of a 'Press Police,' a 'Public Meetings Police' and a 'Political Police' among the fourteen types of police. The institution of the last of these is a violation of Control Council Law No. 31. All three indicate the severe restriction on freedom of political opinion which characterises the Soviet zone. It is less a police than a general political problem.

#### STRUCTURE OF PRESENT STATE ADMINISTRATIONS

In all the zones the Land governments now have a full apparatus of ministries covering the main functions of government. Above them a number of zonal, bi-zonal, or central functional authorities occupy provisional positions whose final clarification must depend on the eventual constitutional structure of Germany.<sup>8</sup> On the intermediate level, the Regierungsbezirk, the traditional unit of state administration in Prussia and Bavaria, has been retained in the British and U.S. zones and, in the British zone, it now serves, in addition, as an economic control unit (Bezirkswirtschaftsamt), but it has been abolished in the Soviet zone. On the next level, major towns (roughly equivalent to county boroughs) and Landkreise (county districts) have again elected local parliaments which exercise control over the executive and, by comparison with the former state of affairs, have received greater independence. As to the position of the executive, the differences between the zones have been analysed in the previous section.

Another difference of considerable importance persists. For

<sup>8</sup> See above, Chapter 5.

many years it has been a major German administrative problem whether the different administrative functions should, on the regional level, be concentrated under one authority (*Einheitsverwaltung*) or whether certain functional ministries such as food, labour, economics, social insurance, should have their own executive apparatus on the lower levels. Under the Nazi regime, the matter became complex and confused beyond comprehension. Various Nazi leaders attempted to build up their own administration and sphere of influence from top to bottom. The food administration was organised separately on corporate lines. In the result, the administrations for food, labour, social insurance, housing, were controlled functionally all the way down, while economic control was divided between three rival organisations.<sup>9</sup>

The complete collapse of central authorities compelled the concentration of functions on the regional levels, but the gradual development of zonal and bi-zonal authorities in the West has again confused the picture. In the Soviet zone the picture is reasonably clear. All functions are concentrated in the Land government whose various ministries exercise supervision all the way down. The zonal authorities in Berlin are gradually developing, in preparation for either a German or a Soviet zone government. In the British and U.S. zones, on the other hand, much of the organisation of the Reich Food Estate has been retained. The vital functions of food and agriculture, power and transport are controlled on a zonal or bi-zonal basis and the Land administrations are by-passed. This is in contradiction to the other trend of making the Land the centre of the new constitutional and administrative structure of Germany. In this, as in so many other fields, the signs of various conflicting policies insufficiently adjusted to each other, are evident. When the new Länder were constituted, with fully fledged ministries, many of the ministries were in search of functions.

In these circumstances the solution attempted in the field of economic administration in the British zone, prior to the bi-zonal fusion, remains as the only reasonable one. It is based on the recognition that the necessary planning and directing powers must lie clearly and unambiguously with authorities above the Länder—

<sup>9</sup> See above, pp. 14-16.

zonal, bi-zonal or national. At the same time, regional planning implementing the general policy of the directives and the executive apparatus must reside in the Land for all functions. The confused system of the Nazi regime could work only because of the iron discipline exercised through the one party system and the concentration of all police power in the centre.

## CHAPTER 7

### DEMILITARISATION AND DENAZIFICATION

IN accordance with the decisions of the Potsdam Conference, the Control Council was charged with both demilitarisation in the technical sense and the more complex process known as Denazification. The former was essentially a technical task, though one of great magnitude. The direction was clear. It was nothing less than the complete demilitarisation of Germany, including the dissolution and liquidation of all remaining German armed forces and para-military organisations. Together with this went the complete destruction of all weapons and disarmament of the German population collectively and individually.<sup>1</sup> The Report submitted by the Control Council to the Moscow Conference of Foreign Ministers (March and April, 1947) shows that this task has been essentially completed. A Control Council Directive of 1945 laid down the procedure for the disbandment of the German forces, and Law No. 34 of August, 1946, declared all German Armed Forces, military schools and organisations as well as all organisations or groups liable to maintain military traditions, to be illegal. One point of difference remained between the Soviet delegation and the Western delegations. The Soviet delegation sharply criticised the retention of 93,500 prisoners of war employed as such in the western zones, over 80,000 of them in the British zone. The Soviet delegation therefore did not agree that all German military formations had been completely dissolved, as these prisoners were organised and disciplined on military lines. The British also maintained a few flotillas of German mine sweepers for the clearing of mines, with the status of 'disarmed former members of the German Navy.' The Western allies, on the other hand, criticised the failure of the Soviet Government to give details of the vast number of German prisoners of war retained in Russia and the absence of information as to their employment or organisation.<sup>1a</sup>

<sup>1</sup> See Declaration Regarding the Defeat of Germany, Appendix, p. 269 *et seq.*

<sup>1a</sup> There is no doubt at all that the groups of prisoners employed in the British zone are not doing any work or training of a military character. They carry

On the whole, however, the problem of technical demilitarisation appears to have been solved and allied disagreements in this field are small compared with most other fields of military government. In this field at least purpose and direction were clear and the lesson of the many loopholes left by the Versailles Treaty has been learnt. Any technical and moral remilitarisation of Germany will, this time, not be the consequence of lack of allied thoroughness and control, but the result of allied conflicts and a new nationalist resistance movement.

It is far different with the novel and immense problem of denazification. The relevant directions of the Potsdam Agreement<sup>2</sup> were: firstly the destruction of the National Socialist Party and all its affiliated organisations and institutions; secondly, the abolition of all Nazi legislation; thirdly, the arrest and trial of war criminals and other influential Nazi leaders, supporters and high officials as well as of 'any other persons dangerous to the occupation or its objectives'; fourthly, the removal from public and semi-public office and from positions of responsibility in important private undertakings of all members of the Nazi Party other than 'nominal participants' and all other persons hostile to allied purposes.

out special work under British supervision and a large number of them are organised as drivers, woodcutters, etc. They wear a kind of uniform but without any military insignia. It is, however, difficult to see why it was necessary to maintain these formations at all in any status other than purely civilian; in particular the retention of a limited number of German officers with their former rank and a measure of disciplinary supervision over such groups was apt to lead to misunderstanding. Firstly, it gave rise to many wild rumours among Germans about the revival of armed formations by the British to fight in a future war against Russia. Secondly, it preserved a certain military barrack atmosphere which was resented by many of the Germans themselves. Mr. Bevin at Moscow rightly undertook the early dissolution of these groups. This might equally well have been done a year earlier. The suspicion that selected groups of German prisoners of war in Russia associated with the names of Field-Marshal von Paulus and General Seydlitz, both captured at Stalingrad, are used as military and political shock formations by the Russians seems unfortunately to have much more foundation. Among Germans rumours to this effect abound. A report from Berlin in the *News Chronicle* of May 13, 1947, tells of a Communist Party meeting at Hanover where two members of the Seydlitz Corps spoke of their function of acting together with the Russians as German patriots and as communists. The same report states that nearly 100 former German officers are now in positions of importance in the Russian army. In May, 1947, German papers (other than Russian controlled) published more circumstantial accounts of the enlistment of numerous German officers in the Russian army. These reports are supported by statements from individual Germans regarding individual members of their families. On another criticism, namely their failure to destroy German warships, the Russians gave way at Moscow.

<sup>2</sup> See Appendix, p. 261.

The institutional and organisational implementation of these directives was a matter of clear-cut and radical measures. In the Western zones, Law No. 5 of the Supreme Commander abolished the Nazi Party and its affiliated organisations. This was later superseded, for the whole of Germany, by the Control Council Law No. 24 of October 10, 1945. The main problem now is that of effectively preventing the revival of any Nazi or militarist organisations. This is done partly by certain restrictions on the freedom of association and above all by the constant supervision of the Intelligence staffs of military government.<sup>3</sup> While the destruction of Nazi organisations does not present any major problem of legislative measures but only one of effective administration and intelligence control, another aspect of denazification, which touches the life of practically every German, is probably the greatest single problem of allied military government; it is the question of method and extent of sanctions applied against individual Germans for their personal affiliation with the Nazi regime, ranging from trial for war crimes to dismissal from positions either public or private, confiscation of property and minor disabilities in the exercise of civic rights.

Chapter 1 has described the unique problem set to the allies by the penetration of Nazism into all parts of German life, public and private. Allied policy was dictated by the desire to reverse the process as far as humanly possible. Nothing similar had been attempted before; never had a particular political system been the declared enemy and never before had any political system affected the life of a big people in so many aspects. If the Nazi regime had intended to make things as complicated as possible for the allies, it could not have chosen a better method. Since considerable numbers of Germans had been courageous enough not to join any Nazi organisation despite all pressure, and many of them had even

<sup>3</sup> The greatest measure in this field so far has been the operation 'Selection Board' begun on January 23, 1947, which was initiated in the British zone, in full co-operation with the U.S. authorities and, to a far smaller extent, with the French and Soviet authorities. The object of this operation was the destruction of a number of organisations described as having the avowed aim to lead the Western powers against the U.S.S.R. with the specific aims of reviving German militarism, stopping disarmament and "reparations and recovering East Prussia and Silesia. The result of this operation was the arrest of a very considerable percentage of the leaders of the movement.

undergone torture, imprisonment or concentration camp for the sake of their beliefs, it seemed at first sight possible to sort out black from white. Only gradually did the infinite complexities of the problem become apparent: the deliberate mixture of political martyrs with ordinary criminals in concentration camps and prisons; the accident or luck which had enabled many officials to stay out of Nazi organisations while colleagues in other ministries with the same convictions were subject to much greater pressure; the difference in the political significance of the vast number of Nazi organisations; the fact that many who had never been party members—such as numbers of industrialists or factory managers, professors and journalists—helped the Nazi regime more than many party members; finally, the fact that many, under the cover of party membership, had actively worked against the regime.

The first measures were relatively simple. All the allies arrested major Nazi functionaries if they could get hold of them. They further proceeded to arrest leading industrialists and economic leaders. Some of these were subsequently prosecuted as war criminals. Even in this limited field, differences soon began to emerge between the allies. The British, American and French have so far preserved, in its essentials, the social and economic system which they found. They have eliminated many of its most objectionable features, but hardly touched the foundations. They have not, for example, transferred to any considerable degree management and control from the employers and managerial class to the workers. Consequently they were from the beginning faced more acutely with the dilemma of either arresting or at least dismissing practically the whole of the industrial managerial class because of their close association with the Nazi regime, or of sacrificing justice to the necessity of restoring the rudiments of an efficient economic life and administration. The Russians, on the other hand, were far less encumbered by such considerations, as they have transferred the keys of economic control to a new managerial class drawn largely from engineers, foremen, technical employees.

The Russians have avoided the infinitely complex and elaborate machinery of denazification which the British and American and,

to a lesser extent the French authorities have built up. In this as in other respects, they have relied on the action of their German political trustees, in particular on the action of local party committees, works councils, trade unions. The British and Americans, on the other hand, worked out an elaborate system of public security and intelligence screening and set themselves no less an objective than the complete combing of the entire German population. The Americans were foremost in applying this system. The British followed more cautiously and with less conviction. Throughout Germany the 'Fragebogen'<sup>4</sup> became the most important single document in the life of the average German. It is a questionnaire designed to assess the degree of Nazi affiliation of the person concerned down to the utmost possible detail. This 'Fragebogen' has been completed by the vast majority of Germans,<sup>4a</sup> and by a large proportion of them many times, as they changed over from one occupying power or from one employment to another. It has to be completed by every official, by every person wishing to retain or to take up any position of even the most modest responsibility—that is, other than entirely unskilled labour; it has to be filled by anyone owning property or wishing to participate in public activity of any sort. More than that—a manufacturer wishing to buy a lorry must fill a Fragebogen.

The more systematic the procedure, the more irresistible became the conclusion that the original idea of removing anyone who had been in some way associated with the Nazi Party or another Nazi organisation was incapable of execution. Three principles gradually emerged: the first was the necessity of distinguishing between active and nominal Nazis; the second was the necessity to transfer the judgment on the degree of Nazi sympathies and affiliations exhibited by any one person to bodies of German anti-Nazis rather than to military government officials unacquainted with the intricacies of the German system and with the experiences of the Nazi regime. The third—a concession of justice to utility—was the need for the temporary retention of certain officials liable to dismissal but indispensable for the economy of the country.

The introduction of these new principles took well over a year,

<sup>4</sup> See Appendix.

<sup>4a</sup> By January 1, 1947, over 11,600,000 persons had filled Fragebogen in the U.S. zone, i.e., over two thirds of the population.

and it meant the re-screening of large numbers of people for the second or third time.

The present network of legislative and administrative measures in the field of denazification is one of the most complex aspects of military government and its explanation in detail would take a book by itself.

The general legislative basis is formed by two Control Council Directives. The first, of January 12, 1946,<sup>5</sup> lays down the principles for the removal, from office and from positions of responsibility, of Nazis and persons hostile to allied purposes. It gives a general definition of the formula first used in the Potsdam Agreement of 'Nominal participation in Nazi Party activities' and of 'Hostility to allied purposes.' Above all, it defines the terms 'Public office, semi-public office, position of responsibility,' etc. As a result, no fewer than ninety-nine categories, covering the whole of military, political and economic life enumerate the ranks and positions which are a ground for compulsory removal from office or employment. To take a few examples which have been of particular practical significance: all civil servants are liable to compulsory removal who, whether party members or not, had a rank higher than 'Referent' in any ministry after January 30, 1933. Since 'Referent' does not denote a specific rank but a general function broadly equivalent to that of an assistant principal in the British Civil Service, practically anyone with any position of even moderate seniority had to be placed in a category of compulsory removal. It included above all numerous officials who refused to join the Nazi Party but were absolutely indispensable, and therefore retained their former rank without receiving the promotions they would otherwise have had as a matter of course. Another category of similar importance included, among compulsory removals, all leading officials down to business managers of the economic organisations of industry, and all senior judges and public prosecutors. All these removals were independent of party membership and based upon the position as such.

There are, however, two important saving clauses in the Directive. It authorises the review of cases by military government authorities

<sup>5</sup> See Appendix, p. 308.

8 (2)

'when there is positive evidence, supported by investigation, that an individual is not more than a nominal Nazi and is not a militarist and is not hostile to the allied cause.' In such cases he may be retained in office. Secondly, the zone commanders have authority to postpone the immediate removal of an individual where his temporary retention is essential in view of the urgent necessity for the maximum production of food and other economic necessities not only for German economy but also for that of other European countries,' provided that the individual was not more than a nominal Nazi. All four governments have made the utmost use of these clauses, faced as they were with the desperate dearth of trained personnel in all branches. It is with the help of these clauses that numerous food officials from the Reich Food Estate have been retained, while all four powers have enlisted the services of prominent Nazi technicians and scientists.

A further list of 'discretionary removals' gives twenty-two categories of persons, who, by virtue of minor associations, are liable to dismissal if they were more than nominal participants in Nazi activities. The most important category in this list consists of nominal members of the Nazi Party who joined the party after May 1, 1937. This date was an American invention of very doubtful value. In the civil service, a law of 1937 made membership of the Nazi Party, if not a compulsory condition, a very much stronger element in the training and career of a civil servant. Otherwise the date is a purely arbitrary one, and experience has shown that many Germans who joined the party in the first flush of misguided enthusiasm were better characters than many who joined it after 1937 with their eyes open.

The implementation of these provisions with all its gigantic apparatus of 'Fragebogen' examinations and re-examinations was left to the military government authorities of the zones, operating usually through two branches, the Public Safety Branch as well as, in the case of senior appointments, the Intelligence Branch. The Directive also stipulated that any retentions of Germans, after full examination, in implementation of this Directive, should be provisional only.

A second Control Council Directive, No. 38 of October 12, 1946,

lays down the principles for 'the arrest and punishment of war criminals, Nazis and militarists and the internment control and surveillance of potentially dangerous Germans.' Its main importance lies in the establishment of five principal categories of persons: (1) major offenders, (2) offenders (activist, militarist and profiteers), (3) lesser offenders (probationers), (4) followers, (5) persons exonerated. The Directive then proceeds to define in detail the activities which justify the placing of any German into one or the other of these categories. The definitions go partly by a general description of activities, partly they take the automatic test of importance of certain organisations. The Directive finally laid down the sanctions to be imposed on the different categories, ranging from death (for major offenders) to minor restrictions on activities and freedom of movement in the case of followers.

Thirdly, a Control Council Law, No. 10 of December 25, 1945, dealt specifically with the trial of war criminals. The implementation of these three Control Council measures in the different zones has been far from uniform.

Control Council Directive No. 24 had placed the responsibility for denazification entirely in the hands of the military government authorities. All four Powers proceeded, in the course of 1946, to establish German denazification panels. German denazification committees, constituted from these panels, were to examine the actual activities and Nazi affiliations of persons whose positions were in doubt. The Americans made the regulation of denazification the object of the first major law to be passed by the Länderrat of their zone. The three states of the U.S. zone, on March 9, 1946, passed an identical law agreed between them and approved by U.S. military government, which established the very five categories later incorporated in Control Council Directive No. 38, but at the same time established denazification chambers on two levels, under the Ministry for Political Liberation. These quasi-judicial bodies were given full powers to prosecute, call witnesses, take evidence and pass verdicts. The chairman has legal qualifications and the other members are to be taken from different professional groups. The minister has the right to cancel decisions after they have gone through the appeal tribunal. U.S. military government has no

direct function in the whole of this procedure. It confines itself to reports by safety officers on the operations of the measures taken under the law. The law is a strong token of the U.S. policy of regarding the new German authorities as the full trustees of military government.

The Soviet military government also organised denazification commissions on all levels, composed of the representatives of the permitted political parties, trade unions and other anti-Fascist organisations. The highest denazification authority is the president of the Land, who acts as an appeal authority, and overall supervision is exercised by the Soviet military government. In the French zone there is a French State Commissioner for Denazification supervising German denazification panels.

The implementation of Control Council Directive No. 38 led to a further complex procedure in the different zones. War criminals are in a category by themselves. In all zones they have been made subject to trial by allied military tribunals, at the prosecution of the Advocate-General or the equivalent military legal officer.

It is the categorisation and trial of the other categories of Nazis which has necessitated further complex machinery. The British authorities established a detailed scheme of categories and sanctions.<sup>6</sup> At the same time they put the responsibility for most categorisations in the hands of German tribunals. Persons in category 1 (war criminals) remain interned until due for trial. Of the major offenders (category 2) most groups (series 6-16 in the table) are classified by British Review Boards. The others are classified by German tribunals. Categories 3, 4 and 5 are classified by German denazification panels. From the German tribunals there is an appeal to German appeal tribunals. From German denazification committees—which are mainly concerned with the denazification for purposes of employment (already discussed above)—there are appeals to German Review Boards.

\* Zone Executive Instruction No. 54 subdivides the five main categories into twenty-three groups (Nazi leaders, officials, industrialists and scientists, profiteers). Sanctions for major offenders comprise death or imprisonment and total forfeiture of wealth; for offenders, internment and control of literary activities, forfeiture of wealth or fines; for lesser offenders, political and employment restrictions; for followers, ineligibility to political office, and movement restrictions. Persons in the first three categories have their accounts and property blocked.

In the Soviet zone, on the other hand, the procedure under Control Council Directive No. 38 appears to be entirely in the hands of the Russian military government authorities.

Enough has been said to show the overwhelming importance of denazification, both in the machinery of military government and in the life of the average German. A double threat hangs over a vast proportion of the German people, including probably at least one member of every family: the threat of disability imposed by classification under one of the categories (other than the category of exonerated persons); and the threat of dismissal from employment other than purely menial work because of affiliation with the Nazi regime. As the original application of the hundreds of categories proved utterly inapplicable and led every one of the military governments to more or less open subterfuge, the later measures described above provided for greater elasticity through escape clauses and the interpolation of German denazification committees which take evidence on the conduct of the examinee under the Nazi regime.<sup>7</sup> As a result, the number of people actually retained in employment is far larger in all zones than would follow from a strict application of the original directive. But the threat of uncertainty and denunciations remains and has a paralysing effect. With every new modification of the procedure new questionnaires were sent out. Moreover, a change of authority or organisation usually led to a renewal of the denazification process. Thus the establishment of the bi-zonal agency meant a new bipartite review of denazification. The greater danger of removal of persons from public office has more and more discouraged able executives from accepting public positions. With the vast number of authorities involved, there cannot possibly be uniformity of treatment throughout the zones or even the different parts of the zones. According to necessity or inclinations of the different military government authorities and the German denazification committees, persons of the same qualifications or disabilities may receive very different treatment. Lastly,

<sup>7</sup> Active anti-Nazis, Jews and half-Jews are overwhelmed with applications for purification certificates, popularly known as 'Persil' tests. They are also eagerly sought as business partners or transferees by business men with a doubtful record.

the German denazification committees and tribunals have begun to operate at a time when the original enthusiasm for denazification has been largely replaced by a wave of disgust and cynicism among the Germans. This is sometimes mixed with fear of eventual revenge by those who have been found wanting by a denazification committee or tribunal. More Germans than one would wish to reckon with the possibility of a new nationalist regime. For a variety of reasons the majority of German denazification bodies tend to exonerate most of those who appear before them. On the other hand, leftists still feel that too many survivors of the Nazi period are retained in managerial positions because of their alleged technical indispensability. This feeling would be greatly lessened if trade unions and other organisations had generally a greater share in the management of public affairs.

Another aspect, the seriousness of which is apparent from the table given below,<sup>8</sup> is of equally grave significance though it affects only a limited proportion of the Germans. As a consequence of the arrest and detention of all those who were considered as being particularly closely associated with the Nazi regime, either by virtue of their political activities or by virtue of their position in public life, many ten thousands are still detained without trial in all zones. As the arrests were determined by automatic categories and not by individual guilt, the detained include many persons such as senior judges, whose complicity with the Nazi regime is essentially a passive one, that is failure to resign office or to undergo prosecution. Such collective measures were justifiable for a limited duration. Detention without trial after two years, however, is not compatible with the professed restoration of the rule of law and the professed abolition of Gestapo methods. The hardships and injustices endured by many Germans are child's play compared with the millions of Russians, Poles, Jews, Frenchmen and Germans who endured death and torture without even the shadow of justification. However, in this, as in any other field, the measures stand to be judged by allied

<sup>8</sup> The figures given below, p. 332, show that the Americans were originally the most radical in automatic arrests, but, like the British, they had released nearly half those originally interned, by January 1, 1947. The Russians have released only one-eighth. Surprisingly, only in the British zone the detentions include a large number of high officials.

objectives and standards and by the purposes of the military occupation of Germany, not by Nazi standards.

Two factors make the denazification procedure second only to the economic problem in significance and urgency. One is that the verdict, especially as regards retention in employment is, for the individual concerned, hardly less than a matter of life and death. Anyone who has been finally categorised as unfit for any position of responsibility (which includes foremen) can no longer hope for any other occupation than clearing rubble. This is a particularly grave consequence for those who came forward for public office and who, after removal from public office, are in a much worse position than before. Secondly, the decision on suitability for employment, which is as decisive an interference with individual life as imprisonment, is in the hands of a multitude of allied and German administrative bodies, with a moderate admixture of judicial elements. This again was inevitable in a transitional emergency and in view of the vast numbers involved. But here again, what was justified at first is becoming objectionable after two years of occupation.

What is the general effect of the welter of denazification measures which has employed thousands of military government officers and probably affected every single German family in at least one of its measures? To follow the traditional procedure of former wars and leave the internal government system untouched would have made nonsense of the professed purposes of the war and it would have been extremely dangerous. The genuine alternatives were between the swift and radical elimination and prosecution of the upper hierarchy of Nazi leaders, including the leaders of industry while leaving the rest of the population in peace and the method actually adopted of combing the entire population. The majority of those who have had practical experience in military government probably feel to-day that the former alternative would have been the better one. It would have meant the recognition of the fact that there is a degree beyond which the categorisation of a people of nearly 70,000,000 into guilty and innocent is a sheer practical impossibility. It would also have meant the realistic recognition that under the pressure of a modern government equipped with all powers of compulsion, the average person will

yield to pressure rather than sacrifice his own existence, or the safety of his family. There can be few, with any experience of denazification problems, who have not seen, time and again, the inexorable logic with which a person—unpolitical or even unsympathetic to the Nazi regime—was driven into one of the ninety-nine categories, and has asked himself: What would I have done? The British at first inclined towards an elastic view. The Americans, with their love of comprehensive schemes and definite principles, always pressed for complete and systematic categorisation and denazification. The French have not paid any excessive attention to the whole problem. They have often been ready to employ able officials provided they were willing to collaborate wholeheartedly with the French Administration.<sup>9</sup>

The Russians have never tired of accusing the Western powers of insufficient denazification; but they have been careful to avoid the complex and never-ending process in which the British and Americans are caught as in a giant spider's web. Instead they have adopted two relatively simple devices: of leaving the matter largely to the German organisations which they trust politically; and of opening the door to ex-Nazis by easy admission into the Socialist Unity Party.<sup>1</sup>

In yet another respect, Soviet methods differed from those of the Western allies. When the Nazi regime collapsed, there was, even in docile Germany, a spontaneous movement for popular justice against Nazi leaders of different descriptions. The Soviet did not interfere too much with such spontaneous movements. The British and American authorities firmly and ruthlessly dis-

<sup>9</sup> During the Summer of 1945 the French administrations of South Baden and South Wuerttemburg were eager to employ senior officials whom the Americans had dismissed from their administrations in the Northern parts of Baden and Wuerttemburg.

<sup>1</sup> This device has naturally been used by many Germans. The reasons are very much the same as those which induced many, under economic pressure, to join the Nazi Party. There is also an affinity of radicalism and intolerance which has always made the interchange between Nazi followers and Communist followers easy, even in pre-Nazi days. There is finally a certain type of intellectuals with unstable judgment who are eager to embrace a new faith and to delude themselves about its meaning. One notices among the present prominent academicians in the Soviet zone a certain number who idealised the Nazi movement and who, with the same lack of political instinct, now idealise the Communist Party.

couraged any such measures.<sup>2</sup> Outwardly, this was an assertion of the rule of law, but it cast an even greater burden of doing justice upon the allies. The vast majority of German anti-Nazis agree that the first alternative, of dealing swiftly and ruthlessly with a limited number of Nazis, coupled with milder measures such as fines against the multitude of lesser offenders, would have been preferable. But it would be idle to deny that to have left the large numbers of managers, foremen, labour office or food officials undisturbed in their positions, would have created widespread anger and confusion. It was a choice between two evils.

Taking all these partly conflicting factors into account, what would have been the reasonable alternative? After close experience of the working of denazification, and after discussion with many allied officers as well as German anti-Nazis, my conclusions would be as follows:—

(1) The categories of compulsory removal should have been limited at a much higher level than was adopted, thus reducing the number of cases under review. This would have greatly reduced the need for escape clauses and the necessity, for all four powers, to retain or use many persons who were, theoretically, unemployable.

(2) The often endless repetition of denazification procedure—almost every German of any prominence has filled the Fragebogen at least six times—should have been reduced.

(3) The vast majority of Germans included in the lesser categories should have been fined as a contribution to the victims of Nazi persecution or to other public purposes. This would have been far preferable to lasting disability.

(4) In the many cases where a person could be shown to have derived material profit from the persecution of an anti-Nazi, reparation should be made, by transfer of stocks or other means.<sup>3</sup>

<sup>2</sup> I witnessed myself the arrest and trial in the British zone of persons who had attempted to shoot a notorious Nazi leader.

<sup>3</sup> A moderate measure to this effect was introduced in the British zone at the end of 1946, at the request of the German Zonal Economic Administration. It provided Jews and anti-Nazis starting or re-starting in business should have first claim on stocks of commodities of those who, in a more specifically defined way, had been Nazi profiteers.

(5) While all this would have greatly reduced the necessity for the complex review machinery, the review procedure actually adopted could have been applied to cases where anyone victimised wished to prove that he was an active anti-Nazi, despite appearances to the contrary.

Psychologically far more essential, in the view of many who worked in military government in the early days of Spring and Summer, 1945, would have been an energetic constructive policy of putting decided anti-Nazis into all responsible posts. It is in this respect that the Western powers at any rate have been grievously slow. The average military government and Control Commission officer inclined only too often towards a safe middle road. The respectable nondescript civil servant or former business acquaintance seemed preferable to the rugged workman or to the politically persecuted. During the first six months, examples abounded of appointments to higher positions being given either to colourless civil servants or nationalist reactionaries who just evaded the description of Nazi in the narrow sense. Gradually, most of these psychological blunders have been cleared up, but the psychological moment has been missed. In the Soviet zone things have often gone to the other extreme. The ex-concentration inmate, the ex-communist, or trade unionist, was given office regardless of experience or qualification. The dearth of politically acceptable capable administrators in Germany is terrible. But even now the preference at least in American and British military government is for the colourless civil servant which often means the disguised conservative. Coupled with this is a marked disinclination of both British and U.S. military governments to give the organised workers movements an effective share in management. In the British zone, this is now gradually lessening, owing no doubt to influence from the Government at home. Of the whole of the British zonal administration established during 1946, only the economic administration was entrusted to a Social Democrat with a positive anti-Nazi record (Dr. Agartz).<sup>4</sup> This cannot happen any longer, since the Land

<sup>4</sup> It had started with the appointment of a leading nationalist industrialist and former vice-president of the Reich Association of German Industry, Mr. Abraham Frowein.

administrations are constituted on a parliamentary basis and the bi-zonal agencies consist of Land nominees.

But it is now too late to recapture the psychological opportunity of the first six months, nor is it possible now suddenly to stop the complicated denazification procedure. It would create a lasting sense of grievance with the millions who have gone through the procedure, against those who have been lucky enough to escape.<sup>5</sup> The line now taken is in the circumstances the only possible one: a definite time limit to speed up and complete pending procedures, and an end of recrimination after that.<sup>6</sup>

On August 17, 1947, Marshal Sokolovsky announced that, in the Russian zone, ordinary members of the Nazi Party would henceforth have full political and civic rights. The denazification process would be confined to war criminals, active Nazis and members of criminal organisations. The announcement claims that land reform, socialisation and the punishment of war criminals in the Russian zone had made this development possible.

In its recognition of the futility of denazification, as hitherto practised, this dramatic measure is characteristically bold and radical. But its timing and method suggest that the Soviet military government has two wider political objectives in mind.

In the first place, this unilateral step emphasises, with possibly deliberate contempt, the split between the allies and the independence of zonal government. In the second place, it is an open bid for the support of the 'small man,' of the unpolitical citizens, millions of whom will be suddenly free of fear and uncertainty. Without question, the S.E.D. will now launch a new drive for mass membership, using the propagandistic effect of this measure on the small ex-Nazi. The Western allies will certainly be compelled to revise their own procedure to mitigate the effect of this Soviet measure.

<sup>5</sup> Both in the British and U.S. zones, the Zone Commanders have directed that persons born after January 1, 1919, should be exonerated unless shown to be particularly dangerous (British zone) or to be a major offender or offender (U.S. zone). In the U.S. zone, the same applies to persons with a yearly income (in 1943 and 1945) of less than 3,600 R.M. and taxable property, in 1945, not exceeding 20,000 R.M. The underlying theory is that such persons could not have profited from the Nazi regime. The same treatment is accorded to more than 50 per cent. disabled persons.

<sup>6</sup> In the coal industry, denazification has been practically liquidated. A British press statement makes it clear that categorisation must not lead to the dismissal of anyone employed in the industry since October, 1946.

## CHAPTER 8

### POLITICAL RECONSTRUCTION

THE Directives of the Potsdam Agreement enumerated among the purposes of the occupation of Germany: 'To prepare for the eventual reconstruction of German political life on a democratic basis and for eventual peaceful co-operation in international life by Germany. . . .' Further: 'All democratic political parties with rights of assembly and of public tasks shall be allowed and encouraged throughout Germany; representative and elected principles shall be introduced into regional, provincial and state (Land) administration as rapidly as may be justified by the successful application of these principles in local self-government.' All four powers may rightly claim to have done much towards the implementation of this Directive. On the surface, they seem to differ only on the speed but not on the principles of democratic political reconstruction. But under the surface, the deep-seated differences of method and policy between the allied powers are reflected in the political structure of the zones.

The two-fold but inter-related task was that of a reconstitution of free organs of political opinion coupled with the training of Germans—used for twelve years to one-party and dictatorial government—in the free activities of democratic citizens.

The principal method of reviving democratic political life in Germany has been the restoration of freedom of speech, of the freedom of public meeting and association, and, above all, the reconstruction of political parties. In accordance with the Potsdam Agreement, all four powers have proceeded to grant the necessary permissions, subject to allied security and the prohibition of any revival of militarism or national socialism. This meant restriction of the freedom of criticism in meetings and press, and the refusal to permit any openly conservative or nationalist parties. A significant advance towards fuller freedom of criticism was Control Council Directive No. 40, of October 12, 1946, which permitted criticism of

German politics, comment on allied policy in Germany, and the republication of political articles on Germany from the foreign press. A glance at German papers shows that full use is being made of this relaxation. Indeed, any continued prohibition of any criticism of the allies would have led to intolerable tension in the present worsening situation.<sup>1</sup>

The occupying powers have redeveloped the German press mainly according to party political lines. The four major parties (in the Russian zone, three) each are responsible for a number of newspapers. The British and Americans also publish one newspaper each, under their own auspices. As the newsprint shortage is great, and, in the British zone, desperate, circulation is determined by licences, in proportion to the strength of the parties. The Americans and French have developed regional newspapers run by committees composed of one member of each of the major parties, and opening their columns to different political views. But in the French zone the major papers are now developing more and more according to party lines. The newspaper supply is everywhere far short of demand, except in Berlin, where the conflicts between allied policies have produced a relative abundance and a competition between papers sponsored by the four different powers. They are increasingly mouthpieces of different allied policies. The Russians have even forbidden the sale of newspapers from the other sectors in their own. On such matters as Russian deportations, or British and American support of capitalists and Nazis, allied conflicts increase the traditional bitterness of German polemics.<sup>1a</sup>

The central problem of political reconstruction was the formation of political parties.

Under the Weimar Republic, the greatest possible freedom of opinion and political organisations had been accompanied by a disastrous display of factionalism which, in German history, alternates with excessive disciplined uniformity. A large number of small parties often stood for little more than a specific sectional interest such as house owners or vine growers. The formation of such groups was encouraged by the proportionate election

<sup>1</sup> Freedom of criticism is now hardly restricted in the British and U.S. zones; in the Soviet zone, criticism of Soviet and S.E.D. policy is dangerous; in the French zone, certain subjects are strictly excluded. (See above, p. 28.)

<sup>1a</sup> An assessment of the different papers is not possible within the scope of this book.

system which enables small parties to gather enough votes for at least a few seats. A very small party could often exercise a disproportionate influence on the government through the instability of coalitions and the necessity for larger parties to bargain for support. Both military government and politically mature Germans aimed at the removal of such dangers from the new political life of Germany, but they chose different methods.

From the Summer of 1945, all four powers proceeded to permit certain political party organisations. This inevitably had to precede the holding of elections. The parties first formed an organisational nucleus and took the first halting step towards democratic life, by representation on nominated councils. The Soviet military administration, in an Order of June 10, 1945, granted permission for the formation and activity of anti-Fascist parties 'whose objective it was to finally exterminate the remnants of Fascism and strengthen the principles of democracy and civil liberties in Germany and the development in this direction of the initiative and self activity of the wide masses of the population.' The U.S. zone was second, with the permission of party organisations on a district basis, in August, 1945, and, on a zonal basis, in February, 1946. Both the British and the French military governments permitted party organisations by Ordinances issued in December, 1945. All four governments naturally imposed the condition of an anti-Fascist and democratic character and discouraged, though by different measures, the formation of splinter parties. As a consequence, four major parties emerged in all zones: the Social Democratic Party, the Communist Party, the Christian Democratic Union and the Liberal Democratic Party.<sup>2</sup> Of these four major parties, three corresponded broadly to well-known political parties in other countries. The Social Democrats, like their predecessors under the Weimar Republic, consider themselves as the heirs of the Second International, and their objectives are very similar to those of the Labour Party in Great Britain. But the particular social situation of German big industry and the reminiscence of twelve years of ruthless

<sup>2</sup> The names of the same party are not always identical in the different Länder. The Liberal Democratic Party in the U.S. zone, for example, has a different name in each of the three Länder. The Christian Democratic Union is called the Christian Socialist Union in Bavaria.

suppression of all working class organisations gives its programme a sharper emphasis on socialisation and the participation of Trade Unions and other working class organisations in the control of public life. The Communist Party closely follows the programme of the Communist parties in other countries; but in Germany it is faced with the particular problem of reconciling its traditional champion-  
ship of Soviet policy with a policy acceptable to the German masses in their present situation. The conflict has been particularly evident in the simultaneous but irreconcilable objectives of communist propaganda for a re-united Germany including both the Saar and part of the territory ceded *de facto* to Poland, and their faithful acceptance of Soviet policy even if it means acceptance of the Oder-Neisse line. Like their comrades in other countries, the German Communists show signs of becoming the champions of a new nationalism. The combination of nationalism and radical socialism is effective where the Communists are in opposition, as they are in the Western zones.

The Liberal Democratic Party corresponds essentially to the Liberal Party's programme elsewhere but it is clearer on the negative than on the positive aspects of its programme. It rejects socialism and clericalism in politics and strongly supports private enterprise and private property. It is the only party which, in most states, openly rejects socialisation and state control of economic life.

The most multi-coloured of all parties is the Christian Democratic Union (C.D.U.). It has a definite Christian basis but purports to reject the exclusive association with the Catholic Church of the former Centre Party and the Bavarian People's Party in the Weimar Republic. The ties between the Catholic Church and the C.D.U. are, however, very strong. This party has undoubtedly absorbed the vast majority of conservative and nationalist elements who cannot afford to come out into the open; but it also contains, like the former Centre Party, a substantial trade union and independent progressive element which supports socialisation of basic industries and the active encouragement of workers' organisations in public life. The result has been a somewhat vague and ambiguous programme, more radical in the eastern than in the Western zone.

As a result of two meetings held in February, 1947, the Western section of the party now advocates a system, practised to some extent in pre-Nazi Germany, of mixed control of industrial undertakings through the participation of private capital, local government and workers. With the possible exception of the coal industry, it rejects socialisation of industry and, after many vacillations, it has recently come out against the participation of trade unions in the direction of industry.

These four parties represent the major political trends in all zones. But in the Soviet zone, the situation has been vitally affected by the merger, in March, 1946, of the Communist Party with a minority of former Social Democrats, in the Socialist Unity Party and the consequent suppression of the Social Democratic Party in the Russian zone outside Berlin. It was evident from votes taken in the other sectors of Berlin that the merger was largely an enforced one. It became clear through subsequent elections in the Russian zone that the independent socialist vote, after the suppression of the Social Democratic Party, expressed itself partly in abstention, partly in a strengthening of the other two parties. This development has made the conflict between the Social Democrats and the Communist Party the most important single factor of German party politics. It has also immensely increased the difficulties of forming a political government for the whole of Germany. While the Social Democrats are ideologically much closer to the Communists than to the other parties,<sup>3</sup> the bitter enmity created by the suppression of the Socialist Party in the Russian zone has driven its leadership in the West to increased hostility. Behind it stands the deepening antagonism between Social Democracy and Communism everywhere, an antagonism of political philosophy and method sharpened by the conflict between Russia and the Western powers. The consequence is a renewed political division within the working class which it was the main object of the left to avoid after the collapse of the Nazi regime.

Although these four parties represent the main trends of political

<sup>3</sup> Occasionally they will vote together as in the proposal for an immediate plebiscite on socialisation, put to the Niedersachsen Parliament in January, 1947.

opinion in Germany, there are some further parties. In the British zone, the Niedersächsische Landes partei has fought for the autonomy of Niedersachsen. It has now been renamed 'Deutsche Partei,' and looks like becoming a party to the right of the C.D.U. The Centre Party in Rhineland-Westphalia represents a Christian element which is more independent of the Catholic Church than the Christian Democratic Union and is more favourable towards socialisation. It also supports denominational schools. In the recent Land elections in April, 1947, it has captured a considerable proportion of the independent vote in that Land. There are in addition seven minor parties of purely local interest.

In the U.S. zone there is, in addition to the four major parties, the Economic Reconstruction Party in Bavaria, which professes to have no political programme but to limit itself to the restoration of economic normalcy.<sup>4</sup> In the French zone a fifth party of a semi-regional, semi-political nature, the Popular Socialist Party of Hesse-Palatinate, which obtained 3 per cent. of the total vote in the last election,<sup>4a</sup> has now been merged with the Liberal Democratic Party.

#### ELECTION PROCEDURE

In all zones district elections have preceded Land elections. In the U.S. zone there have been four major elections. Elections for rural districts held in April, 1946, were followed a month later by elections in the larger towns. On June 30, 1946, the Länder elected the constituent assemblies which proceeded with the drafting of the constitutions. These constitutions were confirmed by plebiscite in October and November, 1946. Finally, between the end of November and the beginning of December, 1946, the Land Parliaments were elected on the basis of these constitutions. The other zones have also had district elections as well as elections for the Land Parliaments. The constitutions passed by the Länder have been confirmed by plebiscites. In the British zone, the deliberations on the constitutions have only just begun.

<sup>4</sup> The illusion that any such programme can be pursued outside the field of politics dies hard. When it comes to the definition of such questions as 'Economic Normalcy,' politics come in rapidly enough.

<sup>4a</sup> For comparative election figures, see Appendix, below, p. 354.

There has been a basic allied difference on election procedure. The British, while cautious in the field of social reform, undertook two major political reforms: the reform of local government<sup>5</sup> and the reform of election procedure. In both cases, the British have gone far to introduce their own conceptions into the British zone of Germany. The new election system adopts, on the whole, the British method of electing candidates, not lists. The candidate with the largest number of votes is elected, but a concession is made to the proportionate system which prevailed in pre-Nazi Germany and other continental countries.<sup>6</sup> Forty per cent. of the votes go to a reserve list put up by the parties, and these forty per cent. are distributed according to the principle of proportional representation.<sup>7</sup> The result so far has been firstly that, as in Britain, a party may obtain a vast majority of seats although it has only a small majority or even a minority of votes; secondly that, in different electoral districts, one party may entirely predominate despite an even distribution of votes.<sup>8</sup> Lastly, the desired overall objective of attaining two major parties which may form alternative governments may be in sight of realisation.<sup>9</sup> The Land elections of April, 1947, showed the Social Democratic Party (S.P.D.) and the Christian Democratic Union (C.D.U.) as the two major parties of the zone.<sup>10</sup> But it does not follow that the system of alternative governments traditional in British politics will apply to Germany, where the trends of political opinion are more diversified. So far protracted negotiations between different parties for the formation of coalition governments have been the rule, resulting, as in pre-Nazi times, in much delay and uncertainty. The other zones have so far adhered to the principle of proportional representation. In the U.S. zone, the three Länder constitutions make this definite though they all provide for the exclusion of election lists which do not obtain a certain minimum percentage of votes.<sup>8</sup> In the Soviet zone, the S.E.D. draft, and,

<sup>5</sup> Discussed above, p. 103.

<sup>6</sup> In the district elections independents secured a large number of votes, but this was not repeated in the Land elections.

<sup>7</sup> For example, in the municipal elections in the British zone held in October, 1946, the C.D.U. polled 11,029,953 votes against 11,179,521 of the S.P.D. Yet the C.D.U. obtained 3,586 seats against 2,847 of the S.P.D. In Hamburg the C.D.U. polled 749,153 and only obtained sixteen seats. The S.P.D. polled 1,210,010 and obtained 83 seats.

<sup>8</sup> 10 per cent. in the constitutions of Bavaria and Wuerttemberg-Baden, 5 per cent. in the constitution of Hesse.

apparently all the constitutions so far adopted in the Länder, accept the proportional principle without this reservation. A safeguard against the formation of too many parties is provided through the restriction of the permission to put up election lists to 'permitted' parties. At present only three parties are permitted. No government could be formed in any of the Länder without the S.E.D.

All powers have proceeded on parallel lines in regard to the re-constitution of democratic forms of government from the bottom upwards. They have also tended to discourage the formation of splinter parties, first, by the discriminating character of the permission given by military government, and, secondly, by electoral devices. But here the ways part. The British have introduced a modification of the British electoral system, the Americans have left the elimination of splinter parties to the German constituting assemblies; the Russians have ensured sufficient supremacy of one party to allow an unrestricted principle of proportional representation.

The powers have also differed in their methods. The Americans have gone furthest in leaving the political pattern to democratically elected German bodies, subject only to the obligation to observe democratic principles. The British have gone much further in the imposition of measures by military government ordinance. The Russians have exercised their control so as to favour their chosen instrument, the Socialist Unity Party, and left the rest to the Germans, under the strong guidance of that party. The Potsdam Agreement and the Control Council have undoubtedly so far prevented a simple imitation of the political structure of the Soviet Union in Germany. There is not yet a one-party system in the Soviet Zone, and opposition is not altogether meaningless.<sup>9</sup> In Berlin, the allies have agreed on and supervised an election held under genuinely democratic conditions.

The vital difference—and one which forms one of the basic political issues of our time not only in Germany but throughout the } group

<sup>9</sup> The change of the voting age from eighteen to twenty in some Länder was due to the influence of the C.D.U. and the Liberal Party, against the original draft } of the S.E.D.

world—is that of the conception of parliamentary democracy. The three Western zones reflect the essence of parliamentary government: the possibility of alternative governments according to changing majorities and reflecting different political philosophies. In the Russian zone, such an alternative is not seriously contemplated. It need not be feared as long as the S.P.D. is suppressed and the key positions, in politics, government, industry, labour are controlled by the S.E.D. The rejection of the substance of parliamentary democracy is, in this case, coupled with the Soviet and communist hatred and contempt for socialism by persuasion and constitutional means. The suppression of the S.P.D. is thus an issue of deep significance, symbolising the political division of Germany and the world. The conflict is sharpened by the social issue, and, in particular the problem of the future control of industry. For the Russians this problem was paramount for two reasons: firstly, it is in accordance both with Marxist philosophy and the development of Soviet Russia that political forms should rank second to the principles of economic and social life. Secondly, the control of industry is vitally connected with the reparations problem and the utilisation of German production for Russia.

The order of priority is the opposite in the Western zones, decidedly so for the Americans, less decidedly so for the British. The impact of political reconstruction in the four zones can only be fully understood if seen together with the measures of social reconstruction. These will be discussed in the following chapter.

## CHAPTER 9

### SOCIAL RECONSTRUCTION

THE Potsdam Agreement was silent on the principles of social reform, except for the provision that de-nazification was to extend to persons holding positions of responsibility in important private undertakings, that German economy should be de-centralised, so as to eliminate the present excessive concentration of economic power, and the very vague principle that German political life should be reconstructed on a democratic basis.

The problem of social reconstruction soon presented itself to all four powers in three different aspects: firstly, the extension of denazification to the leaders of industry and business, rightly regarded as vital pillars of the Nazi regime, presented the problem of the future control and ownership of industry. Secondly, the aim of destroying the excessive concentration of economic power posed the problem of an alternative form of economic organisation. As shown earlier on,<sup>1</sup> the Nazi regime had combined the concentration of many basic German industries, especially of the coal, iron and steel and chemical industries, with principles of the corporate state and produced a twilight atmosphere between public and private economic interests in which the leading industrialists had both public control functions and private leadership in industry. The problem of de-cartelisation was only one aspect of the question. The other was the problem whether to return to a more or less uncontrolled private economy or to replace the semi-corporate principle by state control and a planned economy not controlled by private interests.

Lastly, the need for democratic reconstruction included the reorganisation of social collective organisations whose destruction had been a foremost objective of the Nazi regime. Paramount among them were the trade unions and the consumers' co-operatives.

Again, the development of the last two years shows broad

<sup>1</sup> See p. 4 *et seq.*

parallels in the four zones, but, underneath the surface, deep divergences of social policy.

#### CONTROL AND OWNERSHIP OF INDUSTRY

The Potsdam Agreement contained only two of the directives bearing on the state control of industry. One was the direction—discussed in the chapter on de-nazification—that . . . . persons hostile to allied purposes shall be removed . . . . from positions of responsibility in important private undertakings. Such persons shall be replaced by persons who, by their political and moral qualities, are deemed capable of assisting genuine democratic constitutions in Germany.' It also directed the imposition of allied controls to the extent necessary 'to control German industry . . . . with the aim of preventing Germany from developing a war potential and of achieving the other objectives named herein.'

The allies approached Germany with four different social philosophies. Russia of course was expected to be the herald of Communism. It has already been shown that Britain and the U.S.A. largely agreed on the principles of political democracy. The essentially conservative or non-political character of the leading Control Commission officials tended to emphasise this aspect and to obscure the no less vital difference in the social philosophy between Britain and the U.S.A. Britain, under a Labour Government, meant to large sections of most European nations the hope of social progress and partial socialisation by evolution. At the same time the New Deal programme of the Roosevelt period gave way to a resurgence of free enterprise and capitalist ideas in America. Thus three distinct social philosophies were represented by the three major allies in Germany. France alone, uncertain about her own future social structure and being almost entirely preoccupied with security, reparations and economic exploitation of her zone, has been a fairly neutral spectator.

In Germany the allies faced a situation which could not but narrow down the field of choice. It was part of the declared policy of the denazification of Germany to remove the leaders of industry from control. They had been shown to be beyond doubt one of the vital pillars of the Nazi system, together with the Nazi leader caste itself and with the military caste whose social background was

often that of the large landowner. A negative step was therefore prescribed, and it inevitably posed the question of what was going to happen next. Apart from the general procedure of denazification, all powers singly took sudden and dramatic action to arrest selected numbers of leading industrialists. In the East, Russia acted largely indirectly, through German Communists and workers' organisations. In the West, the American and British authorities took direct action, and arrested between July and October, 1945, a number of leading industrialists, mainly from the heavy industries. In December, 1945, the Control Office announced the assumption of direct control of all collieries and colliery property by the British authorities, and the final dispossession, without compensation, of the German owners.

As in every other field of military government, this negative step was easier than the positive alternative. Until now the maintenance of direct allied control over the main German resources and industries has resulted in the postponement of the decision. Coal has until now been administered by a British Control organisation, the North German Coal Control, for the benefit of all zones of Germany as well as of a number of foreign countries, according to a distribution key determined by the European Coal Commission. The iron and steel industry in the British zone has equally been the subject of a special functional control at Düsseldorf. The declared policy of transfer of responsibility to Germans, together with the gradual building up of German democratic institutions, has brought the question of the future structure of German industry more and more into the foreground. No less important is the international aspect of the matter. Instinctively, the people of the world identify the United States with capitalist enterprise, the Soviet Union with a Communist system operated by a strong state largely relying on the organised working class<sup>2</sup> and present-day Britain with the achievement of a mixed public and private economy through gradual socialist evolution, under a parliamentary system.

In Germany, the allied powers did not only have to follow up their declared aim of breaking up the existing pillars of economic control with a more positive policy; they also had to remake

<sup>2</sup> It does not matter whether this is a true picture of present-day Russia. It is the legend of the early revolutionary Russia which survives with many sections of the radical left all over the world.

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political opinion and the social structure. For the first twelve months at least the allies had absolute power in determining the social pattern of their zone. What use have they made of this power?

#### SOVIET ZONE

Without doubt the re-modelling of the social system has gone furthest in the Soviet zone. It has not so far taken the form of a comprehensive and uniformly planned social revolution or of an overall decree. Socialisation has proceeded, both in industry and agriculture, by a series of separate resolutions and actions.

The first wave of socialisation was not the result of any planned Russian action. As observed earlier on, the Russians interfered far less than the Western allies with the spontaneous action of communists, works councils and other left wing organisations which they encouraged everywhere in their zone and which naturally expected the Soviet military government to favour socialisation. Works councils, trade unions, action committees sprung up everywhere. In thousands of cases they took direct action against specific industrialists or managers and ensured, to start with, that factual control largely passed into the hands of workers' committees. This was not only a spontaneous but also an uneven development, unequal in extent and intensity in the different parts of the zone.

From the spring of 1946 onwards, more systematic measures began to take the place of spontaneous action. The blocking of private bank accounts was followed by the taking over of banking and credit policy by five state banks (one for each Land). The first major measure towards socialisation of industry was taken by the State of Saxony in alleged implementation of Control Council Law No. 10, ordering the punishment of war criminals. A record of firms owned by 'war criminals' was published and a plebiscite was held on June 30, 1946, to decide on the expropriation, without compensation, of the firms owned by such war criminals. The plebiscite resulted in a very large majority for expropriation.<sup>3</sup>

The firms thus expropriated were put under the administration of the Land or provincial government which usually appointed

<sup>3</sup> In the province of Saxony—now Land Sachsen-Anhalt—similar measures were taken not by plebiscite but by decree of the provincial government following a number of sponsored public meetings ending in resolutions for expropriation.

trustees with the approval of Soviet military government. A well informed report from a highly competent German source estimates that, in the highly industrialised former province of Saxony (now Land Sachsen-Anhalt) about one-third of the industrial undertakings have thus been transferred to state administration and effective state ownership. The exact form of socialisation varies however, from Land to Land. Some have formed a Public Holding Corporation, others a state department controlling the different groups of industries. Others have constituted the individual industry groups as Public Corporations.<sup>4</sup> Production is everywhere controlled through a department in the State Economic Administration. It also estimates that a second third comprising the most vital basic industries has now been transferred to direct Russian ownership. In the summer of 1946 the Soviet military government proceeded to transfer vital industries throughout the zone into direct ownership and control by Russian state corporations. It is clear from the list that all the leading branches of industry are included, among them the Leuna and other I.G. Farben Works, the major wagon and machinery factories, a number of brown coal and potash mines and the larger power stations. The form of transfer has been an order of the Chief of Military Government for the handing over of the works concerned to the Soviet Corporation entrusted with the management of that particular industry. In each case, a Russian official was appointed general manager, and a committee was formed by this general manager, with another representative of military government and a German official nominated by the Land government, to effect the transfer. The general manager then appointed a German management committee as well as a committee for the liquidation of assets and obligations of the work concerned. Apparently, the new corporations which receive privileged treatment in regard to supplies, taxation, etc., do not take over mortgages or other liabilities. The transfer to Russian ownership is on reparations account and the Soviet military government has issued directives for the valuation of the assets. According to German reports, which may of course be prejudiced, the crediting on reparations account represents only a small proportion of the real value of the works.

<sup>4</sup> This is similar to the Soviet Trusts, the Public Corporations in which the major industries are organised as autonomous units, under a State plan.

The remainder of the industry is left nominally under existing private ownership, but, as will be shown later on, the effective control and management of all industrial undertakings has largely passed to organisations in which state administration and workers' organisations have the majority.

No less important is the transformation of trade and business in the Soviet zone. Whereas, in the Western zones, the state administrations for industry and trade, that is for production and consumption are combined, the administration in the Soviet zone sharply separates industry from 'Handel und Versorgung' on all levels. The latter administration is in charge of the entire distribution of consumers' goods including the food processing industry. Wholesale and retail trade has been decisively shifted from individual firms to the revived consumers' co-operatives. Whereas the Control Council went on, month after month, debating the conditions under which consumers' co-operatives could recover the co-operative assets transferred by the Nazis to the German Labour Front, the Soviet Government proceeded unilaterally to re-establish the consumers' co-operative movement in its own zone on a large scale and to allot to them Labour Front assets. At the beginning of 1946, agricultural co-operatives, in different parts of the Soviet zone, were instructed to deliver direct to the consumers' co-operatives. Recently co-operative shops have been established at pit-heads. The co-operative movement has become the chosen instrument of trade, as the Socialist Unity Party has become the chosen instrument of politics. They are obviously being privileged in supplies and this, at a time of desperate scarcity of consumer goods, is decisive. The consumers' co-operatives are largely controlled by the Socialist Unity Party whose representatives are in the most important positions.

The most spectacular measure of social revolution in the Soviet zone has been the expropriation of the large landowners and the re-distribution of land among smallholders.<sup>6</sup> In the spring of 1946 one could see everywhere the stakes marking out the new plots.

<sup>6</sup> The Soviet Government claims that nearly three million ha. of land, belonging to over 10,000 different growers—between six and seven thousand of them, 'Junkers,' have been confiscated and redistributed. As privately owned land over 100 ha., in the Soviet zone, only accounts for just over 2,000,000 ha, the confiscation has therefore affected many small properties. This is probably accounted for by 'Nazis and War Criminals.'

The concentration of land ownership in aristocratic (Junker) families which have supplied a large proportion of the military leaders of Germany has occupied successive German governments since 1918 but none has been able or willing to take effective measures. On the contrary, the notorious Osthilfe, designed partly for the protection of agriculture and partly for the political fortification of Eastern Germany, strengthened the landowners by large subsidies. At the same time the large grain-producing plains of Eastern Germany lent themselves far more to large scale production than the mixed farms of the West and South. The Soviet military government did not choose direct transfer of the expropriated agricultural estates to state ownership or even to collective farms on the Soviet model. It also followed its usual method of announcing its reforms not as a Russian measure but as a measure of the German agricultural administration headed by a well-known Communist, Hörnle. The motives for this course of action are not easy to assess. Probably the desire to acquire the support of the landless peasant German labourer was decisive. Coupled with this is the realisation that a multitude of smallholdings deprived of the most elementary implements such as tractors, ploughs, horses, cannot possibly survive without the strongest co-operative measures, which in due course may prepare the way for collectivisation of farms.<sup>7</sup> Already, large numbers of village production committees have been formed, which, under the control of the local administration and of the Socialist Unity Party, supervise production and the distribution of such machinery and implements as there are. These local organisations are now combined in the Peasants' Mutual Aid Association, whose tasks include the building of farm houses as well as the organisation of machine loan stations and, in conjunction with the official administration, the fixing of delivery quotas. This association closely co-operates with the agricultural co-operatives which are mainly concerned with their traditional task of farm credits. This combination of state administration, the Peasants' Mutual Aid Association and the Agricultural Co-operatives will

<sup>7</sup> The Nazi system had on the whole been content with the imposition of delivery quotas without prescribing production to the Germans. The present administration in the Soviet zone seems to go further, prescribing production itself to a largely new and untrained class of peasant owners.

make the transition to a state controlled system of collective farms easy. All available evidence goes to show that the cultivation necessary to fulfil the delivery quotas was ruthlessly enforced with the aid of the local committees, and under the direction of the Central Agricultural Administration at Berlin.<sup>7</sup>

The social change effected in the East is certainly momentous, no matter what the exact form of the eventual agricultural system in the Soviet zone will be. The political effect cannot be accurately gauged. The Land elections in the Soviet zone showed a much greater relative support for the S.E.D.—the main instrument of Soviet policy as well as of the agricultural reform—in the rural districts as compared with the towns. But it is likely that this is much less due to genuine support of the new class of small peasant owners than to the stronger political tyranny exercised in rural districts through the S.E.D. and the almost entirely Communist controlled local government.

#### BRITISH ZONE

Land reform in the British zone constitutes a relatively minor problem. Large estates are few by comparison with small and medium sized mixed farms. British reform plans have been timid. A draft published in June, 1947, contemplates the surrender of titles of ownership in excess of 150 hectares, against compensation, and subject to the right to rent additional land for farming.<sup>7</sup> In the interests of urgent food production, denazification has been moderate, and the majority of farmers other than prominent Nazis have been left in control of their farms. The decision taken by SHAEF, at the beginning of Military Government, to retain the organisation of the Reichsnährstaat was prompted by the same motive. That organisation was efficient but a symbol of the corporate state. On all levels, the functions of leader of the farming community and of state food administrator were combined. The tendency has been for the Zone Commanders to make use of the permission given by the Control Council Directive to retain temporarily officials indispensable for food production. Although democratic farmers

<sup>7</sup> The draft was unanimously rejected, on July 9, 1947, by the Zonal Advisory Council, which accepted a socialist proposal for the expropriation of property over 100 hectares or 130,000 marks in value.

meetings have been revived, the tendency, for the average German, is still to speak of the 'Kreisbauernführer.'

On the other hand the British zone presents the major problem of future industrial control. The Ruhr contains the largest concentration of the German coal and the iron and steel industry as well as a substantial proportion of its chemical industry. Moreover, the coal and iron and steel industries are largely linked, as a number of big German combines control both collieries and steel works.

In October, 1945, the British zone commander announced, on behalf of the British Government, the dispossession of the colliery owners in the British zone and administration of collieries, for the time being, by British military government. Later came the announcement that 'these industries would never be returned to their former private owners.' The control of production and the day to day administration of the coal industry has so far been in the hands of the North German Coal Control, a British military government organisation which is now beginning to transfer executive control to a German Control organisation, the structure of which is not yet clearly determined. At the same time, a Control Board was formed in Berlin to prepare the structural transfer of the coal industry as well as the iron and steel industries. After the bi-zonal fusion this Board was enlarged into a bipartite Board for the British and the U.S. zones. During the fifteen months of its existence, it has done a great deal of exploratory work but little in the direction of a final and decisive transfer of German industry from private to public ownership. The Board has been hindered in any work of major reorganisation by four factors. Firstly, the British Government has not been certain about its own policy. While Mr. Bevin has repeatedly announced<sup>8</sup> the wish of the British Government to see the basic industries of the British zone socialised, the government has never given any clear indication how far and how quickly it will go in this direction. It has in particular wavered between its general preference for the socialisation of basic industries, either through the State or through state controlled

<sup>8</sup> First in his speech of October 22, 1946; last, in his speech of August 4, 1947.

public corporations, and its fear of any new concentration of economic power in the hands of any future German government.

Secondly, the economic fusion between the British and American zones, and the increasing influence of American policy has definitely been a retarding factor since the end of 1946, for the Americans make no secret of their profound antipathy towards socialisation.<sup>9</sup>

Thirdly, the British Government has undoubtedly felt compelled to pay increased attention to German democratic opinion. During the first year of occupation the British, like all other military governments, was practically free in re-modelling the social structure of its zone. There was no organised German opinion and it faced a situation of chaos and disorganisation together with the necessity to carry out the denazification of German life in the widest sense. In this situation, the British military government authorities chose to be bold in the reform of political life,<sup>1</sup> but extremely cautious in the field of social reform. However deplorable this missing of an historic opportunity may have been,<sup>2</sup> after the new German political machinery had been created, the British Government became increasingly less free in the scope of its reforms. Lastly, the federalising policy adopted since the end of 1946 has created a dilemma. As only recently stated by Mr. Bevin in his speech of May 14, 1947, the present British Government does not believe in the breaking up of efficient economic units as a general principle; but at the same time it wants to leave the decision on ownership and socialisation of industry to the Länder and to prevent a new concentration of economic power in any German government. As the bulk of basic industries is concentrated in one Land, Rhineland-Westphalia, this creates a particularly difficult situation. The assets and liabilities of this gigantic industrial area are a concern of the whole of Germany and indeed of Europe. The socialisation is therefore a concern either of a future German government or of a future international control authority, certainly of the largest political unit which will eventually control that area. The control over the industry in this area cannot be left to one Land which

<sup>9</sup> See below, p. 146.

<sup>1</sup> See above, pp. 103, 132.

<sup>2</sup> For a further discussion on this problem, see below, p. 241 *et seq.*

happens to contain the major industrial area. A decision to leave ownership a concern of the Land, but control to a higher economic authority would create further problems. It would leave the Land with the financial responsibilities and the future revenue—when the industry has recovered. The delimitation between ownership and operational control would create countless new problems.

In these circumstances the only major measure initiated by the Control Board has been the 'de-concentration' of a number of steel firms owned by various combines. In February, 1947, four steel works were re-constituted as independent joint stock companies, each with a nominal capital of R.M.100,000. The shares are owned by the North German Iron and Steel Control, a British Control Organisation, which supervises German trustees. German Boards were constituted for each of the four companies, consisting of eleven members chosen in equal parts from the trade unions and the employees of the different works on the one hand and from the members of the public administration on the other hand.<sup>3</sup> These Boards have appointed the managements of the companies.

Thus, a trust administration controlled by British military government holds the shares of the new companies while German Boards representing the State, employers and labour, carry out the executive supervision.<sup>4</sup> The most that can be said is that British military government has so far resisted pressure from different quarters, mainly American, to re-transfer the different units of the coal and iron and steel industry to new private ownership, and has kept the way open for an eventual socialisation.

#### U.S. ZONE

No American action has been taken towards the socialisation of industry. American authorities declare that this is a matter for the parliaments of the newly constituted German Länder. But the bias of the U.S. authorities is as anti-socialist as is compatible with this

<sup>3</sup> This Board of Directors has the functions of a supervisory Board, the Aufsichtsrat of German Company Law which stands above the management called Vorstand. This division is unknown to England and American Company Law.

<sup>4</sup> It should be noted that the managing German trustee, Dinkelbach, the sole denazified survivor of the former big German combine, Vereinigte Stahlwerke A.G., is a director of all these companies, although he has signified his intention of relinquishing these positions as soon as possible.

theory, or perhaps even greater than that. Three examples may illustrate the position. As already noted, all the new constitutions provide, with varying emphasis, for the socialisation of basic industries. When the parliament of Hessen, implementing the categorical declaration of the Hesse Constitution in favour of socialisation of basic industries, decided on the transfer of the I. G. Farben assets to state ownership, American military government exercised a veto and demanded a plebiscite. The plebiscite decisively confirmed the decision of parliament. Since then, no further action has been taken. The industries concerned are still not socialised.

In March, 1947, shortly after Land elections in the U.S. zone had resulted in the reconstitution of the bi-zonal Economics Committee with socialist ministers from the participating Länder, General Clay declared pointedly that it was not the task of the bi-zonal Committees to socialise. In that case it was illogical and inconsistent to constitute these Committees from political men, namely the competent Land ministers. Yet this was done at American insistence.

In May, 1947, Mr. Koenig, Economic Adviser to U.S. Military Government, gave it as his 'private' opinion that the Ruhr coal industry would best be run by private enterprise. In July, 1947, the American Government was reported to have offered to participate in the reconstruction of the Ruhr provided socialisation was postponed for at least five years.<sup>4a</sup>

The divergence of views on socialisation, between the British and U.S. Governments, is one of the most serious problems of the bi-zonal fusion. It was one of the reasons for not merging the zones politically. Yet it is difficult to consider socialisation apart from the economic problems which come before the Bipartite Board and require unanimity. In June, 1947, the British Military Governor was reported as having observed that American objection, on the Bipartite Board, would stop socialisation.

#### THE BREAKING-UP OF ECONOMIC CONCENTRATIONS

The activities of the different military governments in this field have been almost exactly in inverse proportion to their activities in the

<sup>4a</sup> Cf. *Daily Telegraph*, July 19, 1947.

field of socialisation. In the Soviet zone little is known of any deliberate or systematic de-concentration of economic units, apart from such combines which, like the I. G. Farben, had their interests distributed over the four zones. In such cases, it is the fact of zonal division rather than the principle of de-cartelisation which has produced the splitting up of enterprises so as to bring the parts under zonal control. On the contrary, that part of industry which has been taken into direct Russian ownership is being operated by state combines controlling an entire industry. Another part is operated by German state administrations. The remaining units are left as they were. The British Government, while favouring, in principle, the breaking up of large economic concentrations, is opposed to the wholesale liquidation of large and efficient basic industries for the sake of the philosophy of free economic competition, and it favours in principle the alternative of public control. As described in the previous section, the British Government has made a start in economic 'de-concentration' by the establishment of four independent steel companies, each operating one unit which has been detached from former combines. The British and American military governments have also agreed on parallel laws regarding the 'Prohibition of Excessive Concentration of German Economic Power.' This was implemented in the British zone, by Military Government Ordinance No. 78.<sup>5</sup> This Ordinance proclaimed the principle of hostility to cartels, combines and similar forms 'which have the purpose or effect of restraining, or of fostering monopolistic control of domestic or international trade or other economic activity.' Enterprises employing more than 10,000 persons are regarded as *prima facie* constituting such excessive concentrations. But there is a decisive difference between the British interpretation and that of the other military governments. The British view is that such undertakings are to be broken up only if military government, or its designated agency, does in fact decide that they constitute an excessive concentration of economic power. The other military governments, in particular the American, start from the opposite presumption, that they are to be so regarded unless special circumstances are proven to justify an exception.

<sup>5</sup> February 12, 1947, see below, Appendix, p. 341.

This basic difference has prevented a Control Council law on this subject.

An executive regulation to the Ordinance further reduces the practical effect of the measure. The Ordinance does not apply to the railways, the post and the public utilities in the British zone. Nor does it apply to the four major industries taken under direct military government control, that is to say the I. G. Farben, the Krupp undertakings, the coal industry and the iron and steel industry. In other words, the basic industries which are controlled for the purpose of eventual socialisation are outside the scope of de-cartelisation. The guiding motive of the British Government in taking this line has been, firstly its preference for the public control of basic industries rather than their splitting up, and secondly the realisation that these basic industries are on the whole more efficiently managed in large than in small units.<sup>6</sup>

#### U.S. ZONE

As regards changes in the structure of industry, the efforts of the U.S. Government have been almost entirely concentrated on 'de-cartelisation.'

The fight against trusts and combines has been a distinctive feature of American economic history. Although anti-trust legislation has not prevented the formation of very powerful monopolies in the United States, the ideology of competitive economic enterprise has remained strong. It was encouraged in Germany through the proclaimed allied objective of the breaking up of excessive concentrations of economic power.<sup>7</sup>

In view of the particular significance of the I. G. Farben concern for the German war potential and for international economic life, this huge concern, whose administrative headquarters were situated at Frankfurt, but whose 870 undertakings were distributed throughout Germany, has been the main object of the American

<sup>6</sup> The overwhelming reason for nationalisation of the British coal industry has been the inefficiency of a vast number of small and medium-sized coal mines of vastly different productivity and standards of equipment. The German coal industry had, under normal conditions, a fairly high level of productivity, due largely to large scale management and modern equipment. The problem of the German coal industry is not an economic but a social one. Schematic breaking-up would add an economic to the social problem.

<sup>7</sup> See in particular Potsdam Agreement, B. ser. 12.

de-cartelisation effort. A Control Council Law of November 30, 1945, had vested the assets of the I. G. Farbenindustrie in the Control Council, established a control committee and declared the objective of making part of these plants available for reparations, while dispersing the ownership of the remainder, terminating cartel relationships and controlling research and production activities.

The U.S. established a specially large staff for the de-cartelisation of the I. G. Farben assets in its own zone. All four governments have reported to the Moscow Conference on the progress of the liquidation of the I. G. Farben. A considerable number of its enterprises in all zones is scheduled for reparations. The majority carry on temporarily.<sup>8</sup> U.S. military government is particularly pre-occupied with the problems of dispersal of ownership. It has repeatedly stated its wish that the assets should be sold to private bidders, but the German authorities, led by the parliament of Hessen, have declared in favour of State ownership. 'De-cartelisation,' as understood by the Americans, is largely the antithesis to Socialism.

On land reform the U.S. Government has encouraged a few mild measures. In September, 1946, all three Länder in the U.S. zone passed an identical law providing for the compulsory sale of parts of large estates for the benefit of refugee and other homeless farmers.

The overall picture is that the U.S. Government, as distinct from both the British and the Soviet Governments, will strongly oppose any large scale re-concentration of industry whether under private or public ownership, and that it will delay any active measures of socialisation as far as humanly possible in the bi-zonal administration and elsewhere, but it will probably not go to the length of stopping the Länder from deciding on the future control of their industries.<sup>8a</sup> This in itself means a considerable degree of dispersal of ownership and divergence of policies.

#### DESTRUCTION OF PUBLIC CONTROL FUNCTIONS OF GERMAN INDUSTRY

A characteristic feature of the German economic and social system

<sup>8</sup> E.g., Leverkusen (British zone), Hoechst (U.S. zone), Ludwigshafen (French zone), Leuna (Soviet zone).

<sup>8a</sup> Even this is now doubtful. Cf. p. 146, above.

under the Nazi regime was the semi-governmental function given to German industry, through the association of industrial leaders with the government and through the organisation of all German industry and trade in a corporate estate closely linked with state planning and preparations for war.

All allied powers have taken steps to break up this semi-governmental position of the leaders of industry. During the last phase of the Nazi regime, the functional control of industry worked mainly through three channels: the economic chambers (*Wirtschaftskammern*) worked in close association with the Nazi Party and exercised a strong control over the distribution of raw materials and priorities. On the other hand, corporate trade associations (*Wirtschaftsgruppen*), organised by branches as well as districts, represented industry. The exact relation between these two organisations, which were in some cases linked and in others fought each other, was never clearly determined. Lastly, the armaments industry under Speer controlled an increasing sector of the German economy through its overriding claim on armament manufacture and in due course built up its own organisation on all levels. All these organisations were dissolved in all the zones, but here, as in most other fields, the organisations which have taken their place differ greatly, in particular as between the Soviet zone and the Western zones.

In the British and U.S. zones, the measures taken have been largely similar. The reconstruction of the economic administration was directed by the paramount principle that economic state administrations, supervised by allied control, should be in charge of the distribution and allocation of raw materials and consumer goods. The *Landeswirtschaftsamts*, a regional authority, entrusted under the Nazi regime with control of rationed consumer goods, was reorganised in both zones so as to exercise control over the most important industrial raw materials and consumer goods. It was later incorporated into the Land economic ministries. Below them there are, in some cases, intermediate economic officers.<sup>9</sup> On the lowest level, district economic offices supervise the distribution of rationed goods and

<sup>9</sup> In the industrial areas of Rhineland-Westphalia, each *Regierungsbezirk* has one economic office.

materials. A few vital commodities, for which central administration has been deemed essential, notably coal and steel, stand outside this regional organisation.

At the same time both the British and American authorities permitted the formation of trade associations of manufacturers and business men, as voluntary associations and in an advisory capacity.<sup>1</sup> The principle is that trade associations must be voluntary, that they must not exercise control over the allocation of production permits, raw materials or prices, that they may be advisory to the authorities but not exercise any executive powers. The real situation has largely been different in both zones. The allies found the German state administration in a state of complete collapse. Democratic economic organisations, such as trade unions and co-operatives, had to be rebuilt from scratch, after twelve years of complete suspension. But the organisation of the industrial and trade associations, which had enjoyed powerful functions under the Nazi regime, was largely intact. They were ready to continue under a different name. Unfortunately, both the British and the American authorities, acting partly out of necessity but partly out of a disinclination to change the social and economic system, permitted trade associations of manufacturers to resume operations before either the new state administration or the trade unions and co-operatives had got on their feet. Inevitably these trade associations, armed with expert personnel, statistics and direct influence on the various undertakings, acquired many of the controls which they were not supposed to have. It was in many ways the easier but also the most dangerous method of getting some industries going and of operating military government control indirectly. Moreover, chambers of commerce and trade associations, being nominally private, suffered less from staffing difficulties than the new state authorities, which were in the full limelight of denazification and could offer only the modest official salaries. This discouraged many from taking up official positions. By the time the control authorities had established at least the nucleus of a new state administration, the trade associations were again firmly established and it was often with the more or less open support of

<sup>1</sup> See Appendix, p. 339.

regional military government officers that they resisted handing over control to the state authorities. In certain branches of industry, such as oil, rubber, light metals, textiles, it was almost impossible to uproot this system after the good start the manufacturers and business men had had in re-establishing their organisations. Time and again it was found, especially in the U.S. zone, that, despite official instructions, effective control of an industry was exercised by a committee of manufacturers.

Manufacturing and business interests were also allowed to restart another organisation, the chambers of industry and commerce. These, in Germany as distinct from Britain and the U.S.A., had traditionally been public corporations organised on a regional basis and comprising all firms on the basis of compulsory subscription. In pre-Nazi times the firms had elected the chambers on the basis of one vote per firm, regardless of size. The Nazis had of course abolished elections. The chambers of industry and commerce were not, like the trade associations, representative of specific branches of industry. They represented the regional economic interests as a whole and exercised many semi-public functions, such as the supervision over the training of apprentices, arbitration, reports on economic developments and development proposals. Potentially the chambers of industry and commerce were a better instrument for re-activation in post-Nazi Germany than the trade associations. They were, by constitution and tradition, closer to organs of public administration<sup>2</sup> while they had, through their membership, the necessary immediate contact with industry and business. Their composition therefore became a question of paramount interest. As the trade unions revived an old claim for equal participation in the chambers of commerce, business and industry were divided. The most reactionary among them opposed it absolutely, others conceded at least the need for joint committees of industry and labour preserving the chambers of industry and commerce as before. A few agreed wholeheartedly with the trade union claim.

In the British zone, separate Employer's associations have also been reformed. As collection bargaining functions will be very limited for years, and employers are fully represented, through

<sup>2</sup> Salaries were based on civil service scales.

their trade Associations and Chambers of Commerce, it is difficult to see the need for this revival which means yet another organisation and diversion of effort from more vital tasks.

The Americans immediately transformed their chambers of industry and commerce into private associations with voluntary membership and thus created an organisation which could hardly be distinguished from the trade associations. Some of the British control authorities, especially the Manpower Division, also strongly opposed the principle of compulsory subscription. Both were largely guided by an entirely fallacious comparison with chambers of commerce in Britain and the U.S., and haunted by the very word 'compulsory' which they identified with dictatorship and lack of freedom. As regards participation of trade unions in the management of the chambers, the Americans were hostile, the British lukewarm, mainly owing to the old-fashioned idea that the function of trade unions was that of collective bargaining but not of economic management. In the result two types of associations, both representing industry and business, were in operation in the two Western zones long before the trade unions and other economic workers' organisations had effectively reappeared in public life. This indirectly frustrated much of the laudable intention of destroying the political power of German industry. Emergency conditions, but more than that, lack of imagination and of a bold social policy, contributed to this lamentable result.

Soviet policy was very different. Together with the spontaneous formation of workers' committees in the different firms, trade associations of manufacturers and business men were absolutely prohibited. The only type of organisation permitted is the chamber of industry and commerce. This is, however, an institution very different from the previous institution of the same name. It is essentially an auxiliary organ of the state administration, and it is composed as to one-third by the trade unions, as to one-third by state officials, and as to one-third by employers. Owing to this direct link with the state administration and with the workers' organisations, it is allowed to take over many official tasks, such as the sub-allocation of raw materials. It has recently also proceeded to establish functional sub-committees for the different branches of

industry which fulfil some of the functions exercised in the West by the trade associations. There is one general chamber of industry and commerce for the whole of the region which directs the different districts and local chambers. The men in charge of these chambers are usually engineers or economists of strong left tendencies. From all the evidence collected it appears that the employers who represent one-third of the membership of the chambers are genuine employers though of course they can only be taken from the thinned ranks of those who remain after denazification and confiscation. Economic planning has therefore clearly shifted to the state, and executive control to a combination of state authorities with labour and management.<sup>3</sup>

The reorganisation of Handicraft—which normally includes undertakings employing up to twenty people, provided machine work does not predominate—has followed similar lines. Handicraft Chambers correspond to the Chambers of Industry and Commerce. Handicraft Guilds (Innungen) have, in the British and U.S. zones, retained the right to allocate materials among their members, but have been deprived of their former right to make membership compulsory by majority decision.

#### REVIVAL OF TRADE UNIONS, CO-OPERATIVES AND WORKS COUNCILS

The Weimar Republic had known three important organisations which essentially represented the working class in economic life: the trade unions, the co-operatives and the works' councils.

The trade union movement was by far the most important of these. In 1931 it had a total membership of nearly 6,500,000; but the trade union movement was dangerously divided both politically and socially. Politically about two-thirds of the members belonged to the Free Trade Unions (Freie Gewerkschaften). These stood in a similar relation to the Social Democratic Party as the British trade union movement to the Labour Party. They were not openly political but the leadership was closely associated with that of the

<sup>3</sup> At the Leipzig Fair in May, 1946, it became clear that people in the Soviet zone regarded the strong position of trade associations in the Western zones as a sign of the continued predominance of the old class. Their ideas were of course exaggerated and distorted by propaganda but they were not altogether false.

Social Democratic Party. A smaller but important section, with nearly 1,300,000 members, was formed by the Christian trade unions which were closely associated with the Catholic Centre Party and which, in the Catholic districts of Western Germany, strongly competed with the free trade unions. There was a smaller unpolitical trade union organisation of more liberal tendencies. Socially the division was between workers' and employees' trade unions, a division strongly opposed for many years by those who regarded the division between industrial and black-coated workers as unhealthy and dangerous. It was among the employees' trade unions that the Christian and non-political trade unions had their strongest support. The split between the two main wings of the trade union movement as well as that between industrial and black-coated workers weakened the strength of the trade union movement and contributed to its speedy downfall before the Nazi regime.

The Potsdam Agreement directed that 'the formation of free trade unions be permitted . . . subject to the maintenance of military security.' By now, trade unions are an important and numerically powerful movement in all four zones. Yet their function, as well as their method of development and their position in public life, is deeply influenced by the differences in the social policy of the four powers. The Russian military government from the beginning set out to make the trade union movement one of the pillars of its policy and of the new German administration. As early as July, 1945, Marshall Zhukov permitted a zonal association of free German trade unions. This zonal association is organised in a number of unions on the principle of industrial as distinct from craft unions. Each particular trade union covers all members of a particular industry, manual workers as well as employees, skilled workers as well as unskilled. From the beginning, the trade unions were also strongly integrated in the new system of socialist economic control. As already reported, they constitute one-third of the new chambers of industry and commerce. They also exercise decisive influence on management through the works councils in the individual undertakings. Finally, owing to the suppression of the Social Democratic Party and the relative insignificance of the Christian Catholic wing in the Soviet zone, the trade unions are almost entirely under

Communist leadership. These different links make the trade union movement a trusted instrument of the new regime. At the same time the trade union movement in the Soviet zone is faced with the problems of any trade union movement in a socialised and planned economy. Its main function is not collective bargaining opposite an independent employer, but representation of the specific interests of a powerful group within the state, under an overall plan with which it is closely associated. This tendency is powerfully reinforced in Germany through the prices and wages stop decreed by the Control Council in the interests of economic stability, and the inevitable limitation of collective bargaining functions. All these factors have contributed towards making trades unions in the Soviet zone essentially an active agent in the political control of the zone and in measures of social reform. As regards the latter field, the German trade unions have always displayed a powerful and beneficial activity in social welfare. They have maintained co-operative building societies, special welfare and social insurance funds, and a large number of cultural and educational institutions. The new trade unions exercise manifold activities. They take a decisive share in denazification. They have special representation in the committees preparing the new constitutions, and they collaborate in socialisation plans thus enabling the Socialist Unity Party, in many cases, to double its representation.

The total membership of trade unions in the Soviet zone at the end of 1946 was nearly 4,000,000 (including the Soviet sector of Berlin).

In the Western zones the re-building of the trade union movement has followed the pattern of building 'from the bottom upwards.' Trade unions were cautiously permitted, first on a local and district basis, then on a regional basis. In the U.S. and French zones, no organisation is permitted beyond the Land level. There are fifteen industrial unions each in Hessen and Wuerttemberg-Baden and thirteen in Bavaria. In the British zone a zonal trade organisation was permitted in March, 1946.

By the end of 1946, trade unionists in the British zone numbered over 1,700,000, in the U.S. zone just over 1,000,000. In the French zone, where the development was retarded far longer than in any

of the others, they numbered a little over 300,000. By comparison with the respective populations of the zones, this indicates a far stronger proportion of trade unionists in the Soviet zone by comparison with any of the other zones. This is partly explained by the greater speed in organisation and partly by the greater pressure exercised in the Soviet zone, where it is almost impossible for a worker to exclude himself from membership.

The vital differences, however, lie not so much in the membership which is steadily increasing in the Western zones as in their respective functions and positions. Firstly, the Western powers did not to any extent rely on the nucleus of the new trade union movement in the formative era of military occupation. Here, as in other fields, a pedantic conception of formal political democracy suffocated an imaginative social policy. At the time when the old machinery had broken down, the trade union organisers were held back and discouraged from organising above the local level, while manufacturers' associations and chambers of commerce were allowed to revive their activities with an essentially undestroyed organisation. The idea was to build the trade union movement up from a genuinely democratic foundation; this was a laudable idea, but it was often perverted to the point of idiocy by military government officers who had either never known trade unions or did not like them. Many hundreds of trade unions were compelled to submit draft statutes singly and separately for approval by military government. Yet the essentials in the organisation of the trade union as of the co-operative, as indeed of any association, are determined by certain broad and very similar principles. Given the complexity of the apparatus of military government, this greatly retarded the effective functioning of trade unions in the decisive formative era. Under relatively normal conditions or given an equal handicap for employers, this would have been a fair procedure. Given the situation of Germany, the declared objectives of allied policy and the dangerous advantage enjoyed by the intact organisations of employers and industrialists, this was a psychological blunder of the first magnitude. It is one aspect of the general policy pursued by the Western powers: the discouragement of any great social upheaval for the sake of a formal political equality

of this new function. The most important single proposal for social re-organisation has come from the trade unions in the Ruhr in May, 1947. This resolution makes specific proposals for the re-organisation of German economic life and control. It reiterates the demand for a voice of trade unions and co-operatives in a series of control committees which should plan the economic programme, control allocations and enforce measures to ensure full deliveries. It also makes the novel proposal for the creation of new economic courts with powers to inflict economic sanctions. This clearly shows a sense of responsibility and the recognition of a function very different from that envisaged by Control Commission officers thinking in terms of 1932 rather than of 1947.

The Miners' Union for the British zone (Industrieverband Bergbau) at a Conference held on January 29, 1947, put forward an imaginative and detailed proposal for the social and economic re-organisation of the mining industry. The memorandum pleads for an end of the present era of executive responsibility exercised by the British authorities, and for the establishment of a Central Mining Office, which would be assisted by a Coal Council representing all groups interested in coal, including state representatives. This Council would deal not only with the sales and prices and distribution problems, but also with production, planning, and the function of the coal industry in the general economy. The memorandum regards de-cartelisation as a meagre substitute for socialisation as it tends to tear apart coal refinement from coal production, though they belong together economically. It recommends, as a suitable combination of individual enterprise and public control, the Mining Corporation (Bergrechtliche Gewerkschaft) as a legal form in which the different pits should be organised. This resembles in some ways a joint stock company, but puts the control in the management and workers of the mines themselves. Part of the shares in all the different mining corporations, constructed as capital shares without voting rights, would be held by a Trust Company, as trustee of the public. The remainder of the shares would be held by the mining enterprises themselves, as voting shares without capital. The general interests of the communities are thus blended with the specific interests and management rights of the

individual mines under full participation of the miners themselves, through the Works Councils and delegates of the mining management. On a higher level, associations of mines are to take charge of all matters and institutions of common concern to the coal industry as a whole. The holding company (which holds part of the shares) would control the direction of capital assets in the mining industry as a whole. The plan rejects centralisation and is throughout intent on a combination of some general control functions which have to be exercised over a wider area with the necessary stimulus for competitive enterprise. The plan rejects the so-called mixed enterprise, in which public authorities and private enterprise each hold a certain proportion of the shares, but which is otherwise in no way distinguished from ordinary private enterprise.

#### CO-OPERATIVES

The Nazis had preserved some types of co-operative societies such as the agricultural co-operatives, but they had completely abolished the consumers' co-operatives which, as in other countries, had a close historical association with the labour movement and with the very type of collective democratic organisation which the Nazis were out to destroy. The German co-operative movement had been affiliated to the international co-operative movement and it was one of the pillars of social democracy in Germany. It suffered, however, from the same split as the trade union movement with which it had many personal and organisational links: the larger section was close to the free trade unions and the Social Democratic Party, while the smaller wing was close to the Christian trade unions and the Catholic Centre Party. When the Nazis finally dissolved the consumers' co-operatives, in 1935, they transferred all their assets and property, like that of the trade unions, to the corporate German labour front, the compulsory nazified organisation of all German workers and employees.

The new trade union movement could start more easily before having restored to it the assets taken from it by the Nazi regime, such as houses, land and funds. The main purpose of the trade union movement lies in activities which can be largely supported by current contributions. The consumers' co-operatives were in a more

difficult position. The basis of their existence and business are shops and goods. Moreover the German consumers' co-operatives had branched out considerably into the fields of production. They made such consumer goods as bread, tobacco, marmalade and light metal goods in considerable quantities.

Unfortunately, quadripartite negotiations in the Control Council about the extent and form of restoration of the former property of the consumers' co-operatives to the new co-operative societies greatly retarded the reconstruction of the movement. Up to the present, no quadripartite decision has been reached, after nearly two years of discussion. This did not prevent the Russian Government from re-organising the co-operatives and transferring German labour front assets to them. In December, 1946, there were in the Soviet zone of occupation 236 consumers' co-operatives, with a membership of over 1,250,000. In the three Western zones, however, the revival of the movement was very considerably delayed. From the French zone the operation of only fifteen co-operatives is reported. From the U.S. zone, no figures are available. Neither government has shown particular enthusiasm for the re-establishment of co-operative societies. The problem was more acute in the British zone which, with its highly industrialised area, contained a large part of the German co-operative movement and expected from the British Labour Government some active encouragement. This encouragement has not been altogether absent but Control Commission bureaucracy has delayed the formation of the new co-operatives. Only on March 7, 1946, permission for the sponsoring and formation of new co-operative societies in the British zone was given. It was not until the end of 1946 that the first consumers' co-operative was fully operative. This was due to an exaggerated application of the principle that this movement, like the trade union and other democratic organisations, had to be rebuilt from the bottom upwards. Each single co-operative society had to be sponsored separately and individually and to submit separate draft statutes which went through the different channels of military governments and were eventually translated and collected at headquarters. The preparation of any draft statutes by the provisional headquarters of the co-operative movement—

consisting largely of the surviving leaders of the former co-operative movement—was not permitted. As the statutes of the normal consumers' co-operatives are bound to be very similar in type, the necessity for each single society to draft its statute separately was an unnecessarily pedantic condition. The combined effect of the delays was, as in so many other fields of British administration, a dampening of the original hopes placed in the British Government by the leading anti-Nazi elements. After this initial delay had been overcome, progress has been more rapid. By the end of 1946, over eighty consumer co-operatives had their statutes finally approved, and about fifty of them had provisionally had a proportion of their former assets restored to them, not as former owners, but as custodians, appointed under Law No. 52 which provides for the blocking of Nazi property.<sup>6a</sup> Thus the co-operatives are able to use shops, houses and some funds provisionally while the Control Council decision on the final regulation of the property question is awaited.

The re-organisation was not facilitated by the distribution of competences within the Control Commission. On the problem of the restoration of assets, the whole re-organisation of the co-operative movement was entrusted to the Property Control Branch of the Finance Divisions (both in the British and the U.S. Control Commissions). The Economic and Manpower Divisions thus only took a minor interest. In particular, the new co-operatives had sometimes great difficulties in receiving the production permits to restart their former factories. The officers in charge of the different industries were more sympathetic to private business; nor had they more than a cursory interest in the co-operative movement as a whole. There were several examples of the co-operatives having to look on while other factories which had operated throughout the Nazi period obtained production permits from military government. During the last year the British Government has however, shown an increasing interest in the revival of the reactivation of the co-operative movement. While it is significant that their functions cannot be compared with those obtaining in the Soviet zone,<sup>7</sup> it is slowly becoming again an important factor in the economic and social life of the British zone.

<sup>6a</sup> See Appendix, p. 303.

<sup>7</sup> See above, p. 138 *et seq.*

## WORKS COUNCILS

One of the social reforms of the Weimar Republic had been the constitution of Works Councils by a Law of 1920. This law provided for the election of works councils in every undertaking with more than twenty employees and it purported to give these works councils a certain share in management apart from their function of reporting to the management special interests and grievances of the employees. The latter function developed, the former withered away, owing to the stubborn successful resistance of employers.

Works councils have again been authorised, by Control Council Law No. 22. Their progress has been rather more rapid than that of the trade union movement. In the Soviet zone, the spontaneous activities of workers' organisations dispossessing owners and re-organising works often started with the setting up of works councils which took control of the undertaking. In the Western zones, many allied labour officers which slowed down the re-organisation of the trade union movement as being an organisation 'from the top' rather than from the bottom upwards, favoured the establishment of thousands of unconnected works councils representing the individual plant rather than an organised movement. This tendency was particularly supported by those American organisers who came from the American Federation of Labour. In all zones there is now an increasing connection between works councils and trade unions. With the full re-organisation of the trade union movement, the former practice of the trade unions putting up mostly trade unionist candidates for works councils elections has again developed.

There is certainly no uniform development as regards the functions of the new works councils. In the Soviet zone they are in effective control of undertakings even where the owners are left in nominal control. They stimulate production and act as political watchdogs. They seem to fulfil a function similar to the factory Soviets in Russia. Owing to the suppression of the Social Democratic Party and the relative insignificance of the other two parties among the working class, they are essentially another branch of the Socialist Unity Party operating in the field of industrial management.

In the American and French zones the function of the works councils appears to be modest and restricted. In the British zone it is somewhat more significant. In two directions, works councils begin to form an active link between the workers and the general management of economic affairs. A new British zone directive on the re-organisation of chambers of industry and commerce permits, though it does not direct, enlargement of chambers of industry and commerce through the participation of elected representatives of the employees. Further, in some of the re-organised industrial undertakings, such as the de-cartelised steel companies and the coal by-products syndicate, a proportion of the employees' nominees on the boards come as representatives of the works as such, as distinct from the trade unions.

As for the further development of works councils, their function is obviously determined by the structure of the social system. Their function is likely to be outstanding in an economy run by the proletariat. It is smaller but considerable in the society which is being evolved under British guidance where management and labour co-operate in planning tasks. It is of little significance in a capitalist society of the American model.

#### SOCIALISATION AS A POLICY PROBLEM

The problem of socialisation in Germany is not just a problem of ownership, control or management. It is not a purely economic, political or social problem. It is only by considering all these factors together that the problem can be seen in its proper perspective.<sup>7a</sup> Any proposals which, like that of the International Chamber of Commerce,<sup>8</sup> believe that the transfer of shares of basic industries to an allied controlled state bank would solve the socialisation question, do not even touch the surface of the problem.

The problem is first of all a matter of political belief. A majority of organised political opinion in Germany to-day, but in particular the entire organised working class in Germany, believes that the socialisation of basic industries is the only logical and constructive answer not only to the evils of uncontrolled capitalism generally, but to the particular situation created in Germany through the

<sup>7a</sup> Cf. my letter in *The Times*, July 17, 1947.

<sup>8</sup> See below, p. 218.

association of the industrial class with the Nazi regime, and the subsequent dispossession of industrial owners by the allies. To ignore this fact means, consciously or unconsciously, taking the side of the industrial and business class against the organised working class and a large proportion of the independent voters. In the British and U.S. zones the industrial leaders are becoming ominously self-confident and aggressive, as is shown by a recent proposal of the Trade Associations for the resumption of price and production control under loose official supervision. They resist the participation of trade unions in the management of public undertakings. Whatever action the allies take or omit to take, including delaying tactics, they will be deemed to have made a political choice as there can be no doubt either about the vacuum created by the dispossession of industrial leaders, the opinion of the political parties or the view of the organised working class.

The problem is, secondly, a production problem. Here the British and U.S. control authorities have perpetually been in a conflict between implementing the policy of denazification and retaining technical and managerial efficiency. This dilemma cannot be ignored. But the bitterness of the organised working class about the failure to shift the keys of control is also a vital production factor, as can be seen from the parallel example of the nationalisation of the coal industry in Great Britain. The solution lies in the active participation of the organised working class in economic management. This problem has been discussed in some detail, and it has been shown that the most constructive and imaginative proposals for the re-organisation of the basic industries have come from the working classes. There is no doubt either that the argument of technical efficiency or experience has also been used by Control Commission personnel hostile to the principle of socialisation to impede its progress.

The problem of socialisation is thirdly a sociological one. It means the gradual transformation of the organised working class from the exploited class of Marxist theory into a responsible factor of State government. In Soviet Russia and, it would appear in the Soviet zone of Germany, the organised working classes have undoubtedly become a decisive factor in State government, but on a basis of political totalitarianism. In Great Britain, and

consequently in the Western part of Germany, the problem is a more complex one. The trade union movement in Great Britain is going through difficulties of psychological adjustment as socialisation proceeds. But this problem at least is easier in Germany. The trade union movement, the co-operative movement, and allied movements in Germany are conscious of the predominant necessity of rescuing the state from catastrophe. Moreover, the traditional trade union position as a party in collective bargaining and as the instrument of getting an increased 'slice out of the cake' in negotiations with employers, is practically non-existent in Germany to-day. Therefore the efforts of the British and American Manpower Divisions to emphasise, to the almost complete exclusion of other functions, this collective bargaining function of trade unions, are particularly misconceived and artificially create a problem which was mercifully non-existent. The task should be to utilise the acute and burning sense of responsibility which the working class organisations in Germany undoubtedly possess, by making them responsible partners in the economic planning of the state, and by giving them the experience which they badly need.

The problem of socialisation is lastly one of concentration of economic powers. This has been the principal argument mainly of the Americans, but also, to a lesser extent, of the British and French, against socialisation. It is, however, a mistake to identify socialisation with the concentration of power in the state. The proposals of the miners outlined above envisage, in fact, a form of socialisation which is essentially co-operative and competitive, while not destroying the possibilities of wider planning or public ownership. This is emphatically the view of the British Government, which has consistently opposed excessive de-cartelisation, as it would lead to inefficiency and the uneconomic splitting up of industry. Moreover, the dismal experience of the first six months of bi-zonal fusion has shown, even to the Americans, the necessity of basic economic planning powers for central authorities. The task, therefore, is to implement socialisation, firstly by combining the necessary minimum of central planning powers with executive decentralisation, as outlined above, and secondly, to associate the organised working class, the consumer and other classes with

economic administration and industrial management on all levels. The previous analysis has shown a number of examples in which this can be done or has already been attempted.<sup>9</sup>

It cannot be emphasised too strongly that the alternative to continued delay in socialisation will not be a healthy competition of thousands of small enterprises. It will be the gradual resumption of control by the old class of industrialist entrepreneurs. They are, without question, preparing for such a development. In conditions of modern industry and business, the development of vast numbers of well-balanced small competitive enterprises is no more likely than the development of sovereign equal moderate-sized states in international life.

It is, of course, possible and desirable to decentralise management and create reasonably balanced economic units under a general plan for the industry. This is the gist of the miners' proposals for the reorganisation of the Ruhr coal industry. But without such public control, concentration will soon take place again and lead to a new accumulation of private economic power. For that reason the British Government has rightly opposed excessive decartelisation.

<sup>9</sup> See in particular, pp. 152, 159, 160, above.

## CHAPTER 10

### RESTORATION OF LAW AND JUSTICE

ONE of the most dismal aspects of the Nazi regime had been its systematic elimination of the principles of justice which had become the generally accepted standards of modern civilised states. A survey of the main developments under the Nazi regime has been given above.<sup>1</sup> They touched both substantive law and the administration of justice. Such laws as the Reich Citizenship Law of 1935 or the host of Ordinances concerning Jews or the Law for the protection of German blood and honour implemented the Nazi policy of racial discrimination. Others introduced Nazi principles of government into the German law. Among these were the Law for the Unity of Party and State, the Prussian Law legitimating the Gestapo, and the Local Government Code which has already been discussed. Finally, another series of laws concerned the administration of justice, which abolished the principle of *nulla poena sine lege*, such as the notorious statute of 1935, by directing courts to impose punishments by analogy according to the 'healthy instincts of the people.'

As regards substantive law, the Nazi regime had only begun to upset the structure of the German legal system. It had neither time, inclination or expertise to abolish the bulk of German statutes. Instead it undertook legal reform in certain selected fields; but above all it replaced the independence of the judicial system by an increasingly political judiciary and, even more than that, through the side-tracking of the judiciary. Unlimited powers were given to the Gestapo and to party agencies, beside which the ordinary administration of justice became more and more a facade.

The allies have issued several fundamental proclamations and laws regarding the administration of justice. Proclamation No. 3 of the Control Council, implemented by Law No. 4, abolishes all

<sup>1</sup> See pp. 9-11.

extraordinary courts of the Nazi regime and re-establishes the traditional system of courts as it existed before. It also applies the principles of denazification to the judiciary. Law No. 36 provides for the re-organisation of administrative courts. These are a traditional feature of all Continental legal systems as distinct from the Anglo-American legal system. They are competent to decide issues between public authority and the citizen. They can impose injunctions or annul decisions of public authorities in the case of an excess or abuse of administrative discretion, and they function as courts of appeal against police injunctions. It is only ignorance which has led many Anglo-American jurists to suspect the system of administrative courts as being the expression of an arbitrary police state. The present enormous but unordered growth of administrative law in Britain has in fact demonstrated the need for such a system. The allies have therefore wisely refrained in this field from replacing a well-proven indigenous system by their own.<sup>2</sup> Directive No. 19 of the Control Council laid down certain basic principles for the administration of prisons.

In regard to the reform of German law, there has been a great amount of detailed work but little concrete result. Inter-allied preparations are far advanced in the field of social insurance law which would replace the complex and illogical multitude of social insurance systems prevailing in Germany; but agreement has not yet been achieved. Committees have also been formed for the reform of criminal law, the law of civil procedure and a multitude of other subjects. But apart from the proclaimed directives and laws of the Control Council just enumerated, the reform of justice has been, in this as in most other fields, a matter handled differently in the four zones.

#### LEGAL AND JUDICIAL REFORM

The Soviet Government has introduced a unified system and law of social insurance in its zone, but the other governments have so far confined themselves to specific reforms on the basis of the existing system. All four zones have complied with the abolition of some fifty Nazi laws and ordinances as laid down by the Control Council, but they have introduced different piecemeal reforms, laying emphasis

<sup>2</sup> France is, of course, the mother of administrative courts. The system has spread from France over the Continent.

on different matters. Thus, the British and Russian Governments have introduced new local government codes. The British have promulgated a revised version of the Code of Criminal procedure. In the U.S. zone, the different Länder are in process of working out new statutes in different fields. The general picture is that of the German legal system continuing to operate, subject to the elimination of a number of specific provisions, particularly in the field of criminal justice which are of a specific Nazi character. With the collapse of any central government, the Presidents of the Oberlandesgerichte, which normally comprise the area of a medium Land or a Province, temporarily assumed the functions of Ministers of Justice and head of the judicial administration. This could not, of course, become a permanent feature.

In the U.S. and French zones, Land Ministries of Justice were re-established which are in charge of Land legislation and the administrative side of law, including appointments.

In the Russian and British zones, zonal administrations of justice have been established. In the Russian zone it is responsible for principles of legislation and legal training.

In the British zone, the Central Legal Office is 'responsible to Military Government for the efficient administration of justice in the British zone,' in accordance with Military Government Laws and Proclamations.

Subject to Military Government approval, it also initiates drafts and promulgates legislation in matters formerly within the competence of the Reich (including Civil, Criminal and Commercial Law). It appoints the senior judges and public prosecutors. All other matters are the responsibility of the Ministries of Justice of the Länder.

Administration of Justice has so far remained outside the bi-zonal fusion. Legislative methods therefore differ considerably in the two zones.

All zones have proceeded to the re-establishment of the ordinary courts on three levels.<sup>3</sup> In the restoration of administrative courts, the British and U.S. zones are far more advanced than the other two zones. In the Soviet zone, only one administrative court has so far been reopened. In this field the British have

<sup>3</sup> Oberlandesgerichte, Landgerichte, Amtsgerichte.

initiated a reform of considerable importance by including a principle which has long been the subject of much discussion in Germany: the principle of a general appeal to administrative courts against any administrative act alleged to violate rights. Before the Nazi regime, the matter was one for the different German states, most of which provided appeals in specified cases but not generally against every and any infringement of an administrative authority upon individual rights.

Control Council Law No. 21 provides for the reorganisation of Labour Courts. These had been one of the most successful innovations of the Weimar Republic. Composed of a legal chairman and two assessors, one appointed by employers, one by trade unions, they were competent to deal with any dispute between employers and employees as well as with the authoritative interpretation of collective agreements. They were famed for their swiftness, cheapness and fairness. These courts have been revived in all zones. But the chairmen need no longer be qualified lawyers. They must have special experience in labour matters. The Presidents of the Labour Courts of Appeal must still be legally qualified.

There can be little doubt about the wisdom and the necessity of the judicial reform so far described. The same cannot be said about another reform introduced in the British and U.S. zones. Under the Code of Criminal Procedure of 1877, coupled with various Land statutes, the Police had the power to fix, by written order, fines, or detention up to a maximum of fourteen days, in the case of certain contraventions. In every such case, there was the remedy of appeal to the court, and the order had to state this right specifically. This procedure was both beneficial and practical in the thousands of routine cases, such as minor traffic offences, where the facts are clear and no legal problem arises. Similarly, the Amtsgericht (County Court) had the power to fix, by written order, fines or imprisonment up to three months, in the case of certain categories of criminal offences, provided the public prosecutor moved accordingly, and the judge saw no objection. In each case, the defendant had the right to apply for trial. This type of procedure—which was in no way connected with the Nazi regime—has saved the courts and the public thousands of unnecessary trials and costs, the kind of trial which wastes the time of magistrates

and public in England. No one had ever thought of this as an infringement of the rule of law, until the British and American authorities discovered that the conferment of such judicial powers upon the police, or the imposition of penalties without trial was a violation of fundamental principles of justice and of the doctrine of separation of powers. Consequently, even the most trivial routine matter must now go through a trial, at a time when the German courts are desperately short of judges and overburdened with the trial of really serious offences. The same mechanical application of the doctrines of separation of powers has been responsible for the denial of the power of ordinance to the bi-zonal agencies.<sup>4</sup>

Superficially, the restoration of the administration of justice has proceeded on roughly parallel lines in all four zones. Underneath the similarity of form there are, however, vast differences on the function of justice, in particular between the Soviet Government on the one hand and the Western Governments on the other.

In the Soviet zone revolutionary justice plays an important part, and consequently the professional judge is largely being replaced by the lay judge. Special six-month classes have been started for the training of such judges. To what extent they will eventually replace professional judges is not yet clear.<sup>4a</sup> As no former Nazi party members may be judges in the Russian zone, the need to find new personnel is particularly urgent; prosecutors as well as the judges of the lower courts are not fully legally trained. In the Western zones, on the other hand, legal training is being restarted on traditional lines, after expurgation of Nazi principles. Emphasis is on the independence and on the technical training of the judge and the legal profession, whereas in the Soviet zone it is on the fulfilment of a political and social mission. This is of course connected with the deeper contrast of policy. Under the Nazi regime, justice became increasingly dependent on the status of the litigant (Jew or Gentile, Nazi or non-Nazi). The position is now largely the reverse in the Soviet zone. Law courts are

<sup>4</sup> Cf. above, p. 90.

<sup>4a</sup> On July 13, 1947, the creation of District Peasant Offices was announced, to decide on all questions of property law, leases and mortgages. An appeal lies to a 'Peasant's Court,' staffed with one professional judge and two peasants as assessors.

frequently attacked for being politically impartial in such matters as eviction, rent restriction or property actions. Denazification is part of the judicial process as well as a special procedure. In the Western zones, on the other hand, justice is meant to be impartial, and denazification is on the whole in a separate compartment.

It is obvious that the differences of approach will be manifest in such fields as criminal law or legal training where fundamental conceptions of public policy clash most sharply. It seems equally clear that the allies, like the Nazi government, will attempt to realise their ideas of justice mainly through the methods of legal training and the selection of personnel rather than by reforms of substantive law which demand a long period of technical preparation.

Despite all reservations, the outward restoration of a democratic system of justice has made considerable progress in all zones. But this would give a distorted picture of the actual position unless seen against the background of some vital factors in military government: Firstly, security of tenure is an essential element of judicial independence. No German judge, however, has this security at present. Military government can remove him at any time. This is partly due to the difficulties of denazification. A vast proportion of the German judiciary are disqualified under the Denazification Directive of the Control Council. The shortage of trained personnel is such that the Western allies have temporarily reinstated many judges who have been proved to be merely nominal Nazis. In the British zone these amount to nearly half the total judicial personnel. The Russians, being anxious to build up a completely new judicial apparatus of a different political complexion, have made this the object of sharp attacks. Again, this is a difference of principle. The Russians themselves are strict in regard to denazification where they want to be, but they allow a considerable influx of ex-Nazis into the Socialist Unity Party. The real issue is that the Western allies wish to maintain the traditional legal machinery and the Russians do not. The lack of judicial independence was illustrated when a law court in the French zone acquitted one of the murderers of the Finance Minister of the Weimar Republic, Erzberger, under an amnesty

passed by the Nazi Government in March, 1933 ! The French authorities instantly dismissed the judges and cancelled the judgment. In the other Western zones courts have, on some occasions, convicted German deserters from the Nazi army. These and other judgments are the objects of frequent press attacks, which often blur the borderline between criticism and personal invective. The present restriction on the independence of the judiciary is inevitable. But until conditions are sufficiently stabilised to permit a full restoration of judicial independence, the rule of law must remain an aspiration rather than reality.

A second, weightier factor is the suspension of the rule of law in the relations between the allies themselves and the Germans. Foremost in the public eye is the continued detention without trial of ten thousand persons originally arrested *en bloc* because of their positions under the Nazi regime. It is the affinity of such procedure with Gestapo methods and the replacement of individual by collective accusation which constitutes a grave detraction from Western ideals of justice. This has been increased by the collective sentence on certain Nazi organisations such as the S.S. and the S.A. by the Nuremberg Tribunal. The effects of this have, however, been mitigated by executive ordinances. In the British zone, German Tribunals staffed with a lawyer chairman and two lay assessors, and Appeal Tribunals staffed with lawyers only have been established to try members of specified Criminal Organisations. But the charge is for membership 'with knowledge that it was being used for the commission of acts declared criminal by the Charter of the International Military Tribunal.' (Crimes against Peace; War Crimes; Crimes against Humanity).<sup>5</sup> Again, the original necessity for arrest without trial can hardly be questioned. It is their continued duration which turns it into a matter of principle. Last, but not least, the preservation of a state of belligerency enables the occupation authorities to disregard principles of law to a large extent. Whether the rules of warfare technically still operate in Germany or not, has been discussed in another connection.<sup>6</sup> But the effect on public opinion does not depend on the technical position. Foremost has been the wholesale requisitioning of

<sup>5</sup> Ordinance No. 69.

<sup>6</sup> See above, pp. 62-63.

houses, including their furniture, not so much because of the principle of requisition for allied purposes, but because of the complete arbitrariness of selection. Anyone affected by a requisition would lose his house as well as the bulk of his furniture with little prospect of seeing either again. His neighbour might escape unscathed. The feeling of arbitrariness engendered by such measures has been one of the greatest reasons for increased bitterness against military government. Recently requisitioning has largely stopped, but it will take a long time to undo the effect of earlier methods. Similarly, the continued retention of vast numbers of German prisoners of war in allied countries is technically justified by the continuation of a state of war. But this carries all the less conviction as it is allied disagreement which prevents the formation of a German government and the conclusion of a Treaty of Peace.

By far the most important aspect of the rule of law is the application of justice to all, regardless of status and class. Professor Dicey considered the subjection of governors and governed alike to the same law and jurisdiction as one of the three pillars of the rule of law. The sharp differentiation between victors and vanquished in military government militates against such a rule. It is all the more important that the victor should temper the absoluteness of his power by subjecting his own personnel to law. In the present occupation of Germany, this need is greatly reinforced by the importance which the allies, in their propaganda and their proclamations, have attached to the restoration of justice in Germany and to the abolition of the differences of race, nationality, religion which characterised the Nazi regime. The numerous trials, in particular the Nuremberg trial, further underlined this. The allies, sitting in judgment, professed to apply principles of law of general application.

Allied military personnel are, of course, subject to military law and triable by courts martial. An early SHAEF Proclamation established a large number of offences against public order or the security of the allied forces, and set up Military Government Courts to try them.<sup>6a</sup> This affected Germans and established a concurrent jurisdiction with the renascent German courts. In practice, Military Government Courts have confined themselves to trying

<sup>6a</sup> See Appendix, p. 300.

offences of Germans which affected military government (*e.g.*, carrying of arms, concealment of information, prohibited meetings, etc.) An early Ordinance for the British zone extended the jurisdiction of the Military Government Courts to any British civilian 'who in Germany does any act which, if it had been done in England, would have constituted a criminal offence.' Unfortunately, this Ordinance remained largely a dead letter until late in 1946 when a small number of British Control Commission officers were tried for certain offences punishable under English criminal law. On January 1, 1947, Military Government Courts were replaced by Control Commission Courts, which bear a much closer resemblance to ordinary courts. They consist of Summary Courts, competent to impose sentences up to imprisonment of twelve months and fines up to a specified maximum; a High Court which may impose any sentence, including death; and a Court of Appeal, which reviews decisions by the High Court and, in certain cases, of a Summary Court. The judges of the High Court and the Court of Appeal are appointed by the Commander-in-Chief and must be qualified lawyers. Magistrates of the Summary Courts are appointed by the Chief of Legal Division.

The rule of law has been recently strengthened by the setting up of a Control Commission Claims Panel in the British zone, an administrative authority competent to deal with claims by Germans for compensation for damage caused by allied personnel. This was urgently necessary, as German courts may not exercise jurisdiction in any civil case involving allied personnel. A German could not, for example, bring any claim against a reckless allied driver who had killed his child. Nor could a German mother bring an action for maintenance or affiliation against the allied father of her illegitimate child. A stronger inducement to licentiousness cannot be imagined.

This slow but steady tightening of law in regard to the allied personnel serving in Germany is both welcome and overdue. It is the absence of personal security and the re-introduction of political justice in the Russian zone which, more than anything else, still cause the vast majority of Germans to prefer the Western zones. While, in the latter, certain categories of persons are still detained

without trial, and cases still occur of sudden arrests by Public Safety Branch, without any information as to reason or duration, it is mainly in the Russian zone that political suspects (in the eyes of the S.E.D. or the Soviet Government) as well as an ordinary, unpolitical skilled worker or engineer may find himself arrested or deported without notice or trial. The sudden knock at the door, at dawn, the most dreadful memory of all who, in Germany, or in occupied countries, were persecuted by the Nazi regime, is still an important feature of life in the Russian zone.

Such factors as the certainty that there will be no arrest without trial, or the right to claim compensation for a wrong done even if the wrongdoer is a member of the occupying forces, or the energetic prosecution of corruption by the allies, weigh infinitely more in the scales of justice and the re-education of Germans towards respect for law than the abolition of the limited fining powers of the police. The forms of justice have largely been restored, but the revival of a real respect for law in Germany demands the same self-limitation in the exercise of power, as between victors and vanquished, which British jurists demand in the relations between government and governed in Britain. This is all the more important as factors beyond the control of any legislator undermine respect for law in present-day Germany. Such laws as the Control Council Law, threatening the unlawful use of foodstuffs and rationed goods with hard labour for life are flouted daily, as long as the struggle for survival drives people into the black market.

The 'rule of law' is an elusive principle. It certainly does not, as Dicey thought, exclude administrative justice. Nor does it mean a perpetuation of conceptions of government current at the time of the American Declaration of Independence or at the height of Manchester Liberalism. But, in the sense in which it is one of the pillars of the Western conception of freedom and democracy, it does include: firstly, the principle of equality before the law, regardless of nationality, race, religion and class; secondly, an order of law which restrains the arbitrariness of government through a judiciary which takes no orders from the executive. Only the sheer necessities of the occupation should delay the restoration of these principles.

## CHAPTER 11

### EDUCATIONAL RECONSTRUCTION

THE remodelling of school and other forms of education is a vital factor in the task generally known as 're-education.' Quite apart from the deeper question of the new ideals of education to be substituted for Nazi ideas, the allies were confronted with two major technical and administrative tasks; one was the personnel aspect of education. Not unnaturally, the Nazis had been particularly radical in the purging of the teaching profession. About 80 per cent. of German teachers belonged to the Nazi Party or its associated organisations. The Nazi purge had been specially severe in the elementary schools. A distressing proportion of elementary school teachers exchanged radical left for Nazi convictions. After thorough nazification, the Nazi government greatly favoured the elementary school teacher at the expense of the secondary school teachers, whose maintenance of academic standards as well as of more conservative ideas it despised. A uniform training scheme for all teachers was mainly designed to give 'character' training. The second task was that of a thorough revision and purging of books. School books under the Nazi regime had become increasingly impregnated with the adoration of Hitler and his regime, at the expense of truth. For the purpose of magnifying the Germanic contribution, history was falsified and a perverted doctrine of racial biology taught. For the purpose of proving Nazi racial theories, even 'German' mathematics and physics were taught. Heine's 'Lorelei,' perhaps the most popular German poem, was alleged to be by an unknown author. Mendelssohn's music for the 'Midsummer Night Dream' was replaced by substitute music composed by a reliable Nazi. Religious teaching had practically died. The churches and religious organisations, while not entirely forbidden, had been deprived of practically all means of educational influence. The protestant church had been officially 'gleichgeschaltet' although a powerful dissident movement maintained itself. But it was not always easy

to disentangle Nazi teaching from other less objectionable doctrines. Moreover, the Nazi regime had not always substituted entirely new books for old-established ones. It had often purged and re-edited them with certain alterations. The first six months of the occupation witnessed an orgy of destruction of Nazi books by the allies, and as the destruction comprised every book with even the slightest Nazi tinge, the shortage of books soon became desperate.<sup>1</sup> The problem of replacement was not only one of devising suitable new text-books, but of finding paper, fuel and printing presses. Even now the sight of an average German school is pathetic. In dilapidated rooms three or four times the normal number of children are being taught with practically no books or other materials. At best a blackboard and good memory must serve both teacher and pupils.

By the end of 1946, all zones had gone a long way towards completing the denazification of the teaching personnel and the training of new teachers. Many of them, especially ex-servicemen, had been trained in special emergency courses. The number of new teachers in course of training under military government supervision was estimated at about 8,000 in the British zone, over 40,000 in the Soviet zone, 4,000 in the French zone and about 15,000 in the U.S. zone. This compares with the total of teachers of all kinds employed in the four zones of 66,000 in the British zone, 73,000 in the Soviet zone, 19,000 in the French zone and 44,000 in the U.S. zone. It is clear from these figures that by far the greatest 'turnover' is taking place in the Soviet zone. But the training period of six months is far shorter than in the Western zones, and the standards are bound to be correspondingly lower. Undoubtedly, there is, in the Soviet zone, a larger influx of new teachers from classes other than the professional middle class, even though the term 'working class' hides a variety of elements, technicians, scientists, clerks, as well as industrial workers. This picture is repeated at the universities, which will have a very powerful influence on the next generation of leaders of German life,

<sup>1</sup> For example, legal books are practically unobtainable because any legal book, even classics, dealing, say, with the legal aspects of the annexation of Austria was destroyed.

in the professions, in science, in government and administration. The universities—all of which have been reopened and are working under appalling material conditions<sup>2</sup>—are overcrowded with students. Less than a third of the applicants can be admitted. This rush to the universities is due not only to an understandable thirst for learning after seven years of war, and to increasing detractions from university study for many years before then, but also to the uncertainty of many thousands about the future. Large numbers of ex-officers, ex-engineers and scientists, finding no occupation in their own profession, turn to the universities to gain time and await developments. Moreover, it is one way of evading labour duty which otherwise might take them to mines, forestry or other manual occupations.

In these circumstances the problem whether to admit ex-officers has become one of significance and discussion among the allies. The Russians insist on the exclusion of all former active officers. In the three western zones, on the other hand, both active and reserve officers have been admitted. They account for about one-fifth to one-sixth of the total number of students.<sup>3</sup> Of even greater significance is the social background of both teachers and students. The Soviet Government maintains that over 45 per cent. of the new teachers and over 26 per cent. of new university students come from the working classes.<sup>3a</sup> On the other hand, the Education Minister for Thuringia declared in July, 1947, that only 2 per cent. of the students of Jena University were workers. To have excluded large numbers of active-minded and intelligent people from intellectual activity only because they had once been officers would have driven them underground and into active political opposition. But the absence of active encouragement, in the Western zones,

<sup>2</sup> The University of Kiel, for example, is housed in a few ships as its buildings are utterly destroyed.

<sup>3</sup> About 1,550 out of 10,500 in the French zone. About 5,500 out of 31,000 in the British zone. About 5,500 out of 39,500 in the U.S. zone. In the Soviet zone, on the other hand, only 2·6 per cent. of the students are former reserve officers and there are no active officers.

<sup>3a</sup> Allowance must be made for the notorious vagueness of the term 'working class.' For comparison, a detailed survey by the University of Cologne (winter, 1946–47) showed that, of its students, 36·2 per cent. were children of officials, 27 per cent. of independent business men, craftsmen and farmers, 17·9 per cent. of managing employees and foremen, 8·8 per cent. of members of the free professions, and only 4·6 per cent. of workers.

for the extension of University training to a far greater proportion of working-class people is certainly alarming. No one who has attended teachers' seminaries or lectured in the new German universities in the Western zones can doubt that the new students are an eager, earnest and sincere body of men, but, shabby and ill-fed though they are, they have largely preserved the outlook of the professional middle classes from which they overwhelmingly come. A certain proportion of workers' children and students from other social groups may be absorbed by the re-opened adult education colleges and by trade union colleges which are beginning to function, but they are not likely to influence to any degree the outlook of the universities in the Western zone. Yet the universities have been for several generations the centre of German nationalism. Naturally the term 'working class' is now somewhat vague. As admission to universities is dependent upon denazification tests, it is likely that, in the Soviet zone, political trustworthiness is an important factor. Among other documents, a certificate of political reliability from the anti-Fascist committees which exist throughout the zone, as well as a certificate from a political organisation regarding 'active co-operation in democratic reconstruction,' has often to be presented.

The selection of university teachers has presented a similar dilemma. In the Soviet zone the replacement of university teachers has so far been far less radical than one would expect. The reason is probably lack of qualified teachers and concentration on the remodelling of schools and teachers' training. As a result, there is an uncomfortable proportion of that dubious element in German life, the semi-idealist professor who, from scientific detachment, rushed into the Nazi movement, and from the Nazi movement has now rushed into the Communist movement. The corresponding weakness in the Western zones is too large a proportion of ex-conservatives and nationalist professors who have just managed to avoid denazification, but whose outlook cannot possibly provide the inspiration for a new educational approach. Among the list of universities in the Western zones one finds a few men of outstanding calibre and a clear anti-Nazi record,<sup>4</sup> but a greater number of names

<sup>4</sup> Such as Karl Jaspers, Radbruch and Alfred Weber in Heidelberg, Eucken and Dietze in Freiburg, Böhm in Frankfurt, Schnabel in München.

known from pre-Nazi days, competent but essentially steeped in the traditions of the old Germany.<sup>5</sup>

A more radical difference in the educational outlook of the Soviet zone, as compared with the three Western zones, will make itself felt later when the new school system has had its effect. The Western zones have, on the whole, restored the school system prevailing before the Nazi regime. Under that system, children from six to ten years all went to one state school, the 'Einheitsschule.' After this the children either attended an elementary school up to fourteen, with part-time education up to eighteen, or various types of secondary schools. This was admittedly a compromise between more radical ideas after the 1918 revolution and conservative influences. Left-wing circles had long demanded the Einheitsschule for all children up to fourteen years. In the Soviet zone this system has now been introduced; all children attend an eight-year course which, for the last four years, is followed by a secondary school course to which only about 10 per cent. of the children can go. The remainder will be sent to technical vocational schools, from which some may proceed to the technical universities (Technische Hochschule). Private schools (which never were of very great significance in Germany) are now entirely prohibited. The type of school to which a child goes after the eight years' elementary course is to depend entirely on ability and to be entirely independent of means.

It is not without irony that this new school system in the Soviet zone bears, at least in theory, a certain resemblance to the new British school system, which also provides for a general elementary school, followed by a choice between three different types of secondary school, dependent on ability tests only.<sup>6</sup> Soviet Russia herself, on the other hand, has recently abandoned the principle of universal free higher education, and made higher school education dependent on fees, except for a minority of scholarship children.

<sup>5</sup> All these points are confirmed in a Report of a Delegation of the Association of University Teachers which, in January, 1947, visited six universities, two technical high schools and two medical academies in the British zone. (*Universities Review*, May, 1947.)

<sup>6</sup> A considerable difference is, of course, the preservation in England of the fee-paying private school, commonly known as public school.

How far this very considerable difference in the school system will be reflected in a great diversity of educational standards and outlook will mainly depend on spirit and methods of teaching. This it is too early to judge, although there is evidence of political teaching in the schools of the Soviet zone. Apparently a course called 'Gegnwartskunde,' under the guise of a study of current affairs, is in fact devoted to propaganda for the Soviet regime and the Socialist Unity Party. The supply of text-books is much more liberal in the Soviet zone which contains a far greater proportion of the German printing industry than the Western zones. The Russian military government has reported the production of 147 text-books, with 12 million copies, as against 7,800,000 text-books in the British zone, about 2,500,000 in the French zone, and about 6,500,000 in the U.S. zone.

All powers have restored full liberty of religious worship. The different denominations, while separated from the state, enjoy full liberty, and this applies to the Soviet zone no less than to the Western zones. A vital difference exists, however, in the range of their activities. In the Western zones, the churches are of considerable importance in general educational activities, especially in the youth movement, as well as in political affairs. This is particularly true of the Catholic Church. The influence of the leading Catholic prelates, which, under the Weimar Republic, was expressed through the Catholic Centre Party, is now hardly less strong in the Christian Democratic Union. Such dignitaries as the Archbishop of Cologne, Frings, are very powerful political personalities. The Catholic Bishops have repeatedly uttered strongly critical declarations concerning the allied occupation. The Western powers have encouraged the educational and organisational activities of the church; in the Soviet zone they have been strictly confined to religious worship. This also results in a very different structure of the youth movements. In the West the British Government has, with the initial encouragement of Field Marshal Montgomery, encouraged the re-activation of youth movements of all types. The Military Government reports nearly 14,000 youth groups with over 75,000 members in operation. The number is not much smaller in the U.S. zone. As against that, the Soviet zone reports

one youth movement with some 400,000 members. The meaning of this difference is obvious. In the Soviet zone the youth movement is a sponsored one, closely allied to the generally controlled semi-political education of youth and uncomfortably reminiscent of the Nazi organisations of youth movements. In the Western zones the youth movements are liberal and diverse. They cover the different religious denominations, social and political youth movements, youth hostels, etc. This, also, is indicative of the deep differences between the Russians and the Western powers.

In December, 1946, British Military Government, following the example of the U.S. authorities, transferred full educational responsibility to the Land authorities. In principle, this transfer of responsibility is very desirable. But the vast majority of the able and high-minded education officers, as of others with first-hand knowledge of the Western zones, are unhappy about it because, despite the far-reaching restoration of the technical apparatus and academic freedom, they feel the foundations, especially of higher education, to be insecure. Since the rise of the new German Reich, in 1870, German higher education has been increasingly characterised by over-emphasis on learning, at the expense of the wider aspects of education and its function in the social and political fabric of the community. Together with this went an intellectual and social snobbism which made the institutes of higher education largely the preserve of the middle classes. The Nazi perversion of education has now been largely stamped out; but the tired and old men now mostly in charge of higher education join with students who want to make up for lost years in an escape into pure learning and abstract intellectualism. The majority shut themselves off against a more vital conception of education. The intellectual and social limitations of the German idea of 'Bildung' persist. Perhaps light will come from the educational enthusiasm of the organisations which are in the middle of the social and economic problems of the day. It will hardly come from the universities.

## CHAPTER 12

### THE ECONOMIC PROBLEM

HISTORY has shown that economic prosperity, far from being a guarantee of peace is, on the contrary, often a necessary basis for aggression and imperialism. It is equally true, however, that, without a reasonable solution of the economic problem, none of the other problems can conceivably be solved. If a patient is both physically and mentally sick it is useless to attempt a mental cure after the patient has died. Failure to solve the economic problem would make success in any other sphere of military government impossible or irrelevant.

The economic problem of Germany, under allied control, is however in itself a problem of policy, morals and international relations as much as a technical economic one. The reasons for the present plight are to be sought in bad politics and poor morals no less than in muddled economic thinking. A detailed analysis of the economic problem would surpass the scope of this study. Its most salient aspects have been analysed with lucidity and courage by the leading organs of the English and American press. This chapter will attempt no more than a brief survey of the main problems in their inter-relatedness and in their impact on the allied military government of Germany.

#### POLICY PHASES

Up-to-date three phases of economic policy can be distinguished. The first finds expression in the relevant passages of the Potsdam Agreement.<sup>1</sup> Its main principles are:—

- (1) The absolute prohibition of certain types of German Industry, and the restriction of many others.
- (2) The de-centralisation of German economy.

<sup>1</sup> See Appendix, p. 261.

- (3) Emphasis on the development of agriculture and peaceful domestic industries.
- (4) Common allied control policy in regard to the main aspects of economic life, such as production, price control, and foreign trade. This policy was to be implemented by a number of Central German Administrative departments, particularly in the fields of finance, transport, communications, foreign trade and industry.
- (5) Strict allied supervision of industrial disarmament, and the maintenance of a German average living standard not exceeding the average standard of living of European countries (other than the United Kingdom and the Soviet Union).
- (6) The imposition of reparations on Germany by the removal of 'surplus industrial equipment,' assessed in the light of the previously stated policy of partial de-industrialisation. Such removals were fixed on the basis of an exclusive claim of the Soviet Union to equipment situated in her own zone, with an additional claim to 15 per cent. of the surplus industrial equipment from the Western zones, in exchange for other products, and another 10 per cent. without exchange.
- (7) Reparations include in particular the entire German Merchant Marine which under the de-industrialisation plan is not to be replaced by any new sea-going vessels.

These principles were the outcome of an ideology which had steadily gained ground during the last year of war and which saw the key to peace in the destruction of Germany's great industrial and working potential. It assumed that, without destruction and forced restrictions on the quantity and type of industrial production, Germany would once again wipe out the consequences of defeat.

These principles were implemented in the 'Level of Industry' Plan agreed by the Control Council and published on March 27, 1946.<sup>2</sup> At the very time when the Level of Industry Plan, the expression of the allied philosophy of Phase One, had at last been agreed and published, the actual thought of the allies had already moved into Phase Two. Less than two months after the publication

<sup>2</sup> Cf. below, p. 204, and Appendix, p. 333.

of the plan, the Military Governor of the U.S. zone declared that no further dismantling would take place in the U.S. zone, pending agreement on the economic unity of Germany. This was the first open recognition of the fact that, in the prevailing conditions, any further diminution of productive capacity was regarded as disastrous. The British, without making a specific declaration, and without stopping dismantling entirely, were in sympathy with this policy. The Russians, while continuing to press for implementation of the dismantling policy in the West, stopped dismantling in their own zone at about the same time, but in October, 1946, there was another wave of dismantling, this time affecting works together with their skilled staff (e.g., the Zeiss works in Jena). The culmination of this phase was the Stuttgart speech of the U.S. Secretary of State Byrnes in September, 1946. It openly abandoned the policy of Phase One, and substituted a policy of making German economic recovery, up to a level of reasonable peaceful prosperity, the first priority, and the payment of reparations second. The Third Phase, from the establishment of the bi-zonal Western administrations in September, 1946, to the Moscow Conference in March and April, 1947, is dominated by two considerations: On the one hand it is tacitly assumed that unity of German economic administration is not immediately attainable, and that the West (for the time being without the French zone) and the East respectively have to be organised on the alternative assumption of continued division. On the other hand, three of the four allies recognise the need for drastic revision of the Level of Industry Plan. This is clearly indicated by the various allied proposals at the Moscow Conference for an upward revision of the level of German steel production from the figure of 5·8 million (with reserve capacity up to 7·5 million tons) to figures varying from 10 million to 12 million tons. While there is now no basic disagreement among the allies (with the partial but increasingly half-hearted exception of France) on the need for a policy reversal, the picture is obscured by the continued division of Germany. Consequently, the Soviet Government insists on the original reparations policy in regard to the West, which it regards as potentially hostile, while gradually abandoning this policy for its own zone. The wider problem of the principles and methods of revision of the Level of Industry Plan

has not so far been tackled in detail. The Moscow Conference has left the problem open whether the plan should be scrapped altogether or merely needs an upward revision.

#### THE ECONOMIC STATE OF GERMANY SINCE THE OCCUPATION

##### *The Effect of Zonal Division on productive capacity*

In no field has the effect of the zonal divisions of Germany been more marked and more disastrous than in the economic field. In the present situation the most important division is that between the Soviet zones on the one hand and the Western zones (including the French zone but excluding the Saar) on the other hand. Berlin constitutes a very important but in no way self-contained third sector, separate from the rest though economically more closely linked to the Soviet than to the other zones.

Before the war, the industrial productivity of the Eastern and Western zones was approximately in the relation of 40 per cent. to 60 per cent. Of the total national income of about 65 milliard Reichsmark, the East produced roughly one-third and Berlin roughly 10 per cent. This leaves some 57 per cent. for the Western zones. Of the total occupied population, 34 per cent. were in the Soviet zone, 58 per cent. in the Western zones and nearly 8 per cent. in Berlin. Taking the principal branches of economic activity, that is, first, agriculture, forestry and fisheries, secondly, industry and handicrafts, thirdly, trade, transport and finance, and fourthly, public utilities and services, the Eastern and Western zones appear surprisingly similar in structure. In both zones the first category provided a little over 13 per cent. of the total production, the second group a little over 50 per cent., the third group around 20 per cent. and the fourth group between 16 per cent. and 17 per cent. Nearly 50 per cent. of Berlin's production was in the second group, the remainder was divided between the third and fourth groups, agriculture being practically non-existent.

These figures show that the political, administrative and economic separation of Berlin from the rest of Germany is a major disaster. The outstanding share of Berlin in Germany's total industrial capacity was largely derived from the high development of certain

specific industries. Nearly half the German electric industry was in Berlin. Other major industries concentrated in Berlin were the clothing industry, the printing and paper goods industry, the instrument and optical industry, the machinery industries and public utilities. For all these finishing industries, Berlin was entirely dependent on raw materials from elsewhere. Allied disunity has increasingly led to the economic attachment of the four sectors of Berlin to their respective zones. This not only dissects Berlin economically but compels the three Western zones to maintain expensive and difficult links between their zones and their Berlin sectors over a distance of hundreds of miles.

Although the Western and Eastern parts of Germany had a roughly similar division of economic activities, neither was self-supporting. The Eastern zone was dependent upon the West for coal and steel.<sup>3</sup>

On the other hand, Western Germany is heavily deficient in regard to the four basic foods of bread, grains, barley, oats and above all, potatoes. The whole of Germany was agriculturally self-sufficient to the extent of over 80 per cent., her main deficiency being fat. She was entirely self-sufficient in grain and potato production. The survey on which these figures are based<sup>4</sup> calculates that, without supplies from the Russian zone, the Western zones would in normal times have to cut their consumption of bread by 21 per cent., of barley by 20 per cent. of oats by 15 per cent. and of potatoes by 24 per cent. Nor were the industries of East and West self-contained. The mining industry of Central Germany was entirely dependent for its equipment and spare parts on the Ruhr. The textile industries of Saxony and Westphalia were specialised on entirely different products.

It is apparent from this greatly simplified and summary analysis that even considering the highly intensive organised and well functioning economy of Germany in the last few years before the

<sup>3</sup> The respective production figures for coal in 1936 were: In the Russian zone—28.5 million tons of hard coal; 91.3 million tons of brown coal. In the Western zone—129.8 million tons of hard coal; 70.1 million tons of brown coal. About 34 million tons of hard coal were exported from the whole of Germany, nine-tenths of it from the Western zone.

<sup>4</sup> The World To-day (*Chatham House Review*), July, 1945. Slightly greater deficiencies are given by Hoffman, Zones of Occupation, Department of State Bulletins, Nos. 354, 355 (April, 1946).

war, the present division of Germany into two major zones, with Berlin cut off from its sources of supply, would have meant a major upheaval. But the following factors have greatly increased this dislocation: firstly, the impoverishment of the agricultural productive soil through the drastic reduction of fertilisers during the war (ranging from 30 per cent. to 50 per cent.) and even more in the first two years of occupation; to this must be added the gradual exhaustion of the soil through excessive application of artificial manure. Secondly, the drastic reduction of industrial capacity through military operations and, at least in the Eastern zone, through large-scale dismantling. Thirdly, the very incomplete economy unity which so far has been established even within the Eastern and Western zones. In the West, economic unity between the British and American zones is only beginning to be effective. The French zone is still largely outside and only beginning to intensify trade relations with the other two Western zones. Fourthly, the loss of two major industrial regions and one major agricultural area. Silesia, in the East, accounted for the bulk of hard coal production in the Soviet zone, and the Saar in the West, accounts for a substantial proportion of hard coal production in the Western zones. The Eastern area up to the Oder-Neisse line which is now a *de facto* Polish territory, accounted for at least 13 per cent. of the total German agricultural production, mostly grain and potatoes. Fifthly, the all but complete stoppage of imports of vital industrial raw materials for the finishing industries. Sixthly, the drastic loss of manpower productivity caused through steadily deteriorating nutrition standards, appalling housing conditions in the big cities, and absence of essential consumer goods. Seventhly, the slowing down of the economic machine through an incredibly complex apparatus of allied and, often weak and inexperienced, German authorities and a detailed system of production and export permits. Eighthly, a steadily deteriorating transport and maintenance situation. Rolling stock, electrical, mining and agricultural equipment wears out rapidly, through lack of proper maintenance and spare parts. Lastly, the flood of refugees in the British and U.S. zones.

These factors operate all over Germany though not with the same intensity. At this point therefore the overall analysis must

be continued by a brief survey of economic conditions in the different zones.

#### ECONOMIC DEVELOPMENTS IN THE SOVIET ZONE

It is only in recent months that sufficient material for a fairly accurate picture of conditions in the Soviet zone has become available. The agricultural position in the Soviet zone while not quite as critical as in the British zone, has been very difficult, through the cutting off of the main grain producing area in the East. It has been increased by the use of immense quantities of potatoes for alcohol (by Russian orders) and by large-scale removal of cattle and horses; consequently there is a most serious deficiency in manure and fertilisers (nitrogen is again produced by the Leuna Works) and the difficulties have been increased through the splitting up of the large estates into small uneconomic units cultivated to a large extent by ill-equipped and inexperienced farmers. The industrial position has been decisively influenced, during the first phase of military government, by the large-scale dismantlings of plants<sup>5</sup> and in the second phase by the transfer of about one-third of the remaining industrial capacity into direct Russian ownership. Reports agree that the bulk of the output of these Soviet owned plants goes to Russia.<sup>6</sup> Against this, both friends and enemies of the Soviet administration agree that such industrial capacity as remains is fully utilised—a rough estimate of industrial production in the Soviet zone is about 30 per cent. of pre-war production. In contrast to the Western zones, there is not only no nominal unemployment but effective full employment. This is ensured firstly by the blocking of all private accounts in the Soviet zone which forces everybody to work, and, secondly, by Russian and Communist methods of stimulating production by a mixture of exhortation and sanctions. The following confidential report, from a German source, written in October, 1946, about the highly industrialised province (now Land) of Sachsen-Anhalt may be regarded as representative:—

‘As regards the provision of labour and materials, certain

<sup>5</sup> In the mechanical engineering industry it is estimated at 53 per cent. of 1936 capacity. War damage accounts for another 24 per cent., so that the remaining capacity is 23 per cent. In the machine-tool industry it is only 17 per cent.

<sup>6</sup> This has recently been denied by German officials in the Soviet zone.

large chemical concerns, such as the Leuna Works and the Buna Works, as well as the plants working for reparations, have priority. These firms will be able to maintain their present intensive production for a prolonged period. It is different, for example, in mining. Brown coal production, the industrial basis of Saxony, runs at full capacity. Despite the dismantling of certain plants, the highest production of the war years was slightly exceeded in August, 1946; but in a few months, there are bound to be strong reactions, because this production is achieved through an irresponsible waste of men and materials. The workmen are compelled to work every Sunday—many works have worked every Sunday in August—while the machines do not get the necessary repairs and overhauls. The supply of spare parts is so small that a partial collapse is inevitable. Supplies of grease and oil for example are only 50 per cent. of 1942, steel parts only 9 per cent. Moreover, spare parts for the mining industry of Central Germany have always come from Westphalia. This will mean a complete collapse. The Soviet-owned plants will receive sufficient priority and be put as an example before the rest of the population. At the same time any factory manager who does not fulfil his production quota must expect the accusation of sabotage.'

There is no doubt that the bulk of industrial output in the zone goes to Russia, although there is much controversy about the exact proportion. Soviet and Communist sources naturally tend to give a lower figure than 90 per cent., which is the estimate of most German sources.

Feeding and living conditions in the Soviet zone differ considerably as between the different Länder. Conditions in the agriculturally poor districts surrounding Berlin are often appalling beyond description. Conditions in the Western parts of the Soviet zone—less affected by the last few months of war operations—are considerably better. The official nutrition standards now lie above the Western average, but this is no more an accurate picture of the real situation than the corresponding figures in the West. Without doubt the entire population is compelled to work hard.

Political pressure and financial necessity compel those who have been affected by denazification to do menial work much more effectively than in the West. The fear of eviction, deportation or secret arrest makes conditions in the Soviet zone psychologically similar to those under the Nazi regime. The black market is generally estimated to be smaller than in the Western zone. The people have less time and money for it, and the penalties for being caught are harsh. A limited but apparently entirely theoretical outlet is provided by the permission given to farmers to sell surplus produce, above the delivery quota, on the free market. A moderate economic recovery of the Soviet zone is dependent, firstly, on the still doubtful policy decision of the Soviet Government whether to keep her part of Germany in a state of economic subjection or whether to restore her to reasonably full productivity within the economic orbit of Eastern Europe. If the decision is taken in the latter sense, the second requirement will be a supply of raw materials, the improvement of farming methods and the supply of fertilisers, agricultural machines and breeding stock for agriculture. This again is partly dependent on a fuller revival of fertiliser production which is potentially large owing to the big potash supplies in Central Germany and the capacity of the Leuna Works for the production of nitrogen.<sup>8</sup> The fulfilment of all these conditions is more likely once the immediate emergency needs of Russia herself are less pressing.

#### ECONOMIC POSITION IN THE FRENCH ZONE

The zone, while mainly rural, is not agriculturally self-sufficient. For a population amounting to approximately 8 per cent. of the total German population, it normally produces about 5 per cent. of the cereals, 6 per cent. of the potatoes, 6 per cent. of the sugar beet and 5 per cent. of the dairy produce of Germany. On the other hand, it produces 40 per cent. of the German tobacco and 75 per cent. of its wine. These two commodities, together with timber, are the main economic assets of the zone and account for most of the exports which have enabled France to get a small surplus out of the

<sup>8</sup> The Leuna Works at present appear to concentrate on the production of synthetic petrol for Russian needs.

zone, although production is estimated by the French to be less than 50 per cent. of the normal.

Industrial damage is estimated at about 30 per cent. The main industries are leather and watchmaking, both of considerable potential export value. There are also two big chemical plants, at Ludwigshafen and Rheinfelden.

The Saar coal production, over 10 per cent. of the German total, has received privileged treatment and, with over 63 per cent. of its peace-time production, has recovered well. But the Saar is now, in every way, treated as an economic part of France. Customs barriers ceased in December, 1946; the territory is not treated as a Land but as a separate administrative unit under direct French control; its living standards are adjusted to those of France, not of Germany. France rigidly refuses to subsidise her zone, and her occupation forces largely live off the land. The official food ration for the average consumer is estimated by the French themselves as varying between 1,000 to 1,300 calories, but it has, in fact, frequently fallen far below this level.

The French estimate the industrial activity of their zone (in February, 1947) at 25 per cent. of the normal. They have consistently complained of inadequate allocations of coal and power from the other zones. An agreement reached in April, 1947, promises them increased allocations of Ruhr coal, in proportion to an expected rise in output. So far this increase has not materialised.

On the whole, conditions in the French zone are grim. Only the rural character of the zone, and the fact that the French carried out most of the dismantling and reparations in kind immediately, have prevented the dramatic worsening of the situation as it has occurred in the British zone. Moreover, the French zone alone has a slightly smaller population than before the war, as it has practically no refugees from other countries or zones.

#### ECONOMIC POSITION IN THE U.S. ZONE.

The U.S. zone has a considerable industrial potential which is not, however, concentrated in a few major industries. Her industries are moreover largely of the type which is not prohibited or only lightly restricted by the Level of Industry Plan. War destruction,

while heavy, cannot compare with the British zone. The zone has for some time received certain supplies of raw materials from America, in particular raw cotton, for industrial production and export. It has recently reported an increase in industrial activity to a level of 46 per cent. of the pre-war standard in June, 1947. This recovery is mainly in the light industries, such as leather and textiles. The zone also contains some of the most important chemical plants (Hoechst), machine industry (locomotives and motor cars at Munich, ball bearings at Schweinfurt). In timber, it is the richest of the four zones. The main weakness of the zone is its almost complete dependence on coal supplies from the Ruhr. Its only major source of power is water power in Bavaria. The zone is deficient in agricultural produce, mainly in bread, grains and potatoes, but better off in meat and dairy produce than the British zone. Feeding standards vary but are, on the whole, superior to the North, particularly so in Bavaria.

#### ECONOMIC POSITION IN THE BRITISH ZONE

The British zone presents by far the greatest economic problem. The full gravity of the situation has only gradually become apparent. As the major industrial area of Germany, the zone had vast stocks of raw materials, which enabled most of its industries to continue reduced production for periods ranging from six to twelve months after the capitulation. These stocks are now completely exhausted. The following give a representative illustration of the development.

Taking the 1936 standards as a basis (100 per cent.), the overall level of industrial production was 31·3 per cent. for the average of 1946, 26·5 per cent. for February, 1947, 33 per cent. for April, 1947. For consumer goods, the corresponding figures are 20·4 per cent., 17·7 per cent. and 23 per cent. (appr.). Production of mined iron ore slumped from a monthly average of 360,000 tons in 1936, and 228,000 tons in 1946, to 82,000 tons in February and 90,000 tons in March, 1947. Finished hot rolled steel products were produced at the rate of 112,000 tons in February, 1947, rising to 164,000 tons in April, as against an average of 820,000 tons in 1936 and of 151,000 tons in 1946. The production of potash fertilisers was only 8,746 tons in February, 1947, as against an average of 30,950 tons in 1936.

and 17,816 tons in 1946. The 1947 target for this fertiliser (particularly important for potatoes) is 22,500 tons, but in March production slumped to the catastrophic level of 1,685 tons. A substantial increase is reported for May. Nitrogen production shows up rather better, with 7,171 tons in February, rising to 10,298 tons in March, 1947, against a monthly average of 13,690 tons in 1936, and of 6,808 tons in 1946.

The most important, and also the most interesting of all production curves, is that of hard coal (Steinkohle). In February, 1947, when production generally was at its lowest ebb, it had risen to over 230,000 tons, as against 105,000 tons in May, 1945, 218,000 tons in January, 1946, and a 1936 average of 390,000 tons. In April, 1947, it sank to 210,000 tons, and began to recover from the second half of June onwards, exceeding 230,000 tons again early in August.

The rise was due to the introduction, on January 16, 1947, of a points system for miners. Apart from the privileged feeding standard for miners (rising, in the case of 'very heavy miners' to about 4,000 cals.), the new scheme allots points, graded according to the heaviness of the work, in six categories. The allocation of points is made dependent upon a minimum of work performed, and measured by shifts, in the case of underground workers, and of working hours, in the case of surface workers and employees. Doubtful cases, especially excusable absences, are decided by the management, together with the Works Council. Additional points are allotted, up to a fixed maximum, for increased production, both of the district and the pit in which the individual is working. The points entitle to the supply of a variety of consumer goods, ranging from suits, shoes, linen, household goods, to bacon, coffee, sugar, tobacco and Schnaps.<sup>9</sup>

The slump, after the initial rise, was due to the failure of food supplies, but also to the unprecedented general depression in the zone, in Spring, 1947, from which it is impossible to isolate any section of the community.

<sup>9</sup> It is a melancholy reflection on the speed of Control Commission machinery that practically the same plan had been put forward by the Zonal Economic Administration and the Economic Advisory Council, in April, 1946. Action was taken nine months later. A further plan, announced on July 26, offers extra rations for increased output and, after a sustained increase in production, the setting aside of part of the foreign exchange proceeds of coal exports for additional goods for the miners.

The general analysis is one of declining production, even since the beginning of the occupation, and of a slump, during winter, far beyond any normal seasonal effects. There are a few exceptions, where special attention has been concentrated on production in a particular industry. But it would be psychologically impossible to increase the gulf between one or two privileged sections of workers and the rest too far. An extension of privileges to many classes of workers, on the other hand, is made impossible because there are not enough additional foodstuffs and consumer goods to go round.

The most telling figure is the drastic decline in productivity per gainfully employed person. By comparison with 1936, it now varies between 60 per cent. in the coal industry and 25 per cent. in the building industry, with an average of just over 30 per cent. (Official German figures.) A vicious spiral has been responsible for this disastrous development. The British zone, potentially the richest part of Germany and one of the richest in Europe, was more heavily struck than any other zone by the sudden collapse of supplies of raw materials and food. Food supplies from America and an increasingly hard-pressed Britain have prevented complete famine but resulted in a steady deterioration of the feeding situation which in May, 1947, left the distributed ration for the average consumer at under 1,000 calories per day.<sup>o</sup> This state of affairs has led a growing proportion of the population to spend an ever increasing proportion of their time in hunting for food in exchange for skilled labour-consumer goods, existing stocks, or black market profits. This, together with the tendency of farmers everywhere to hold back supplies in times of difficulties, has greatly decreased the formerly strictly enforced deliveries from farms for the general population. The general deterioration in standards of food, housing and clothing has progressively depressed the productivity of industry and increased the cost of production. The official price structure is therefore entirely artificial. Firms divert an increasing proportion of their products from official channels. Nails are exchanged for lubricants, bicycles for food. The firms can retain their skilled workers only if they provide canteen meals. The maintenance of

<sup>o</sup> The agricultural area is about equal to the 1938 area (smaller in grains, larger in potatoes). But owing to soil exhaustion and lack of fertilisers, the expected yield for 1947 is only (roughly) 50 per cent. in grain, 70 per cent. in potatoes, 65 per cent. in sugar beets. Zone food production would provide under 1,000 calories a day, given normal farm deliveries.

a skilled nucleus of workmen is their only hope for the future. The tendency to deal on the black market rather than accept work at official rates has been increased by the failure of the Western powers to block private accounts. German authorities, demoralised and often corrupt, are deplorably slack in enforcing labour duty. Scores of young men, ex-Nazis and others, can evade productive work or street clearing by dishonest medical certificates.

Added to all this is the uncertainty about future dismantlings for reparations. The actual number of dismantled plants has been relatively small;<sup>1</sup> but the threat of dismantling hangs over hundreds of factories which have received provisional notices or are being valued. Psychologically, the Russian and French zones had their worst shock in the first year. The U.S. zone has stopped dismantling since May, 1946. But the British zone, which was left largely undisturbed in the first year, is feeling the threat of dismantling increasingly at a time when the economic and psychological conditions are reacting more and more strongly against it.

In these circumstances, the vestiges of an ordered economic life are disappearing fast. At the most critical moment, the zonal economic administration for the British zone—which had at last been given sufficient executive powers—was replaced by ineffective bi-zonal agencies which have consistently been denied the necessary executive powers. In particular the bi-zonal economic administration had to wait many months before acquiring the vital powers for controlling production and dealing with black market transactions and initiating the necessary prosecutions.<sup>2</sup>

How far can this sombre picture be brightened by the economic fusion of the British and U.S. zones? In the first three months of the fusion the effect has been negligible, except for a certain improvement in the freedom of movement between the zones. The economic purposes of the fusion—the political factors were, of course, at least as decisive—were essentially three: a levelling up

<sup>1</sup> By May, 1947, approximately 125,000 tons of machinery and equipment had been dismantled; thirty-two plants from the zone had been allocated to individual nations for reparations; dismantling operations were proceeding at 120 plants.

<sup>2</sup> Control Council Law No. 50 of March 20, 1947, threatening black market transactions with the severest penalties, including hard labour for life, is likely to remain a dead letter. The situation has deteriorated so much that the struggle for sheer survival is stronger than the fear of punishment.

of feeding standards; an increase in industrial production, through pooling of resources; a combined import-export programme, in accordance with a five year Anglo-American plan. (Bevin-Byrnes agreement.) The last of these was the most ambitious of the different objectives aimed at by the fusion. Over a period of five years, an estimated deficit of one billion (milliard) dollars in Germany's trade balance was to be wiped out. The necessary imports of food and raw materials, to be supplied on credit, by Britain and U.S.A., was gradually to rehabilitate German industry in the West to the extent of a balance between imports and exports, in 1949, and a small export surplus after that. On this basis, the Joint-Export-Import Agency, under a U.S.-British Control Board, planned for a 1947 export target of 350 million dollars.

After the first three months, the feeding standards in the British zone were worse than ever before. The index of industrial production in the combined zone, according to statistics of the bi-zonal economic administration, had declined from 38 per cent. in November, 1946, to 27 per cent. in February, 1947, for the combined zone (1936 equals 100 per cent.).<sup>3</sup> Above all, exports had reached just over one third of the target, and the biggest items were coal (over one half) and timber (over one eighth), that is to say the most uneconomical exports of bulky raw materials, instead of refined industrial products. The only other major items were machines, iron and iron alloys, and invisible exports. Contributory reasons for this failure are: first, the blatant weakness of the bi-zonal set-up, with its encouragement of economic particularism and the impotence of the bi-zonal administrations (cf. above, p. 88 *et seq.*); secondly, the catastrophic winter with its calamitous effect on the already very grave situation of fuel and power and of transport (railways and waterways). This further depressed vital supplies and manpower productivity. There seems no end to the vicious spiral. Some of the effects may be mitigated by administrative improvements, greater power to the bi-zonal administrations, stronger measures against the farmers, and, at the production end, by further concentration on coal and fertiliser production. But within the present limitations of supply, it is clear from the analysis

<sup>3</sup> With the advent of spring, it is recovering slightly. (See above, pp. 196-197.)

given above that no substantial further increase of coal production can be expected.

It is obvious that only radical help from outside, by means of food, vital raw materials and essential consumer goods, can stop the rot and put the combined zone in a position in which it could begin to work its way towards a greater measure of self-sufficiency.

#### THE PROBLEM OF CURRENCY REFORM

The growing disproportion between the increasingly artificial control system of prices and wages, and the actual slump in the value of the mark on the black market, is aggravated by the continued failure of the allies to agree on currency reform. The need for such a reform is undisputed. The Nazi regime had encouraged a limited inflation by financing a large proportion of its war expenditure through state debts and by allowing high profits and wages. The end of the war left Germany with a note circulation estimated at 65 milliard Reichsmark. Although there has been no new printing of Reichsmark since, the amount in circulation is still not very drastically reduced. The issue of allied military marks by the four allies has added to the circulation. Accurate information on the total of allied military marks is not obtainable owing to the failure of the Russians to supply details, but it is generally known that, in the initial period of occupation, the Soviet Government printed enormous numbers of allied marks thus enabling its troops to acquire consumer goods cheaply.

There is no doubt about the gross disproportion between the amount of money in circulation and the amount of goods available. To combat this state of affairs, the allied powers have taken different measures, some jointly, some separately. Foremost among the joint measures is a drastic increase in income tax and certain vital indirect taxes (mainly tobacco and alcohol). Equally important though increasingly artificial is the freezing of prices and wages. It is only by Control Council decisions that departure may be sanctioned and the only substantial concession so far has been the decision to allow an increase in miners' wages of 20 per cent. Further, all payments on the German public debt have been suspended. Finally all powers have maintained substantially similar

principles in controlling the budget expenditure in their zones. In the absence of Reich authorities, the bulk of the former Reich taxes has been collected by the Länder, which have also collected Reich revenues.

Here agreement ends. From the beginning, a vital difference developed insofar as the three Western powers only blocked the accounts of Nazi organisations and individuals, a procedure linked with the general process of denazification. The ordinary person is still free to dispose of his private account. The payment of pensions, annuities, insurances, etc., was soon resumed. Consequently a vast amount of surplus money has stimulated the black market and created an increasingly important unofficial price structure, side by side, with the official control price structure.<sup>4</sup> The Soviet Government, on the other hand, at once closed all bank accounts and payments on deposit. This caused great hardship to the old and disabled, but also equalised the financial condition of the population and compelled practically everyone to work. Coupled with the much stricter political and social control of employment, this has certainly reduced the black market in the Soviet zone to smaller proportions as compared with the Western zones. Behind the difference in financial policy, there is of course a social difference. By one drastic measure, the Soviet Government has reduced the entire population to one level, and the new differentiations are based on the new social hierarchy, that is to say on positions of leadership in industrial management, party life, scientific research, etc., but not on capital assets. The Western allies, by refusing to block accounts, have preserved the differences in wealth and social position. They have therefore felt the need for currency reform more urgently than the Soviet Government. Despite countless discussions, no agreement has been reached. The Americans alone have put forward a definite plan (in Summer, 1946), the main features of which are as follows:

- (1) Conversion of the present mark into a new mark at the rate of 10 to 1.

<sup>4</sup> To take only two outstanding examples, the salary of a medium senior official is about R.M.600 a month. This would, on the black market, buy 1 lb. of coffee or 80-100 cigarettes.

- (2) This rate of conversion to apply to all money and other claims, except specified social insurance claims. Wages, prices, taxes, etc., will remain payable at the same rate as before the conversion.
- (3) The German public debt is to be reduced to the amount of the German Government debt as on January 30, 1933, that is to say the vast increase of the debt under the Nazi regime is cancelled.
- (4) In order to mitigate the social injustice caused through the drastic conversion of the mark, which affects the poor infinitely more than the rich, a war loss equalisation fund will be established which will be financed mainly by a public mortgage on all real estate, plants and other assets. Certificates will be issued by this fund in accordance with priorities to be established.
- (5) A progressive capital levy is to be imposed on all remaining assets for the benefit of the equalisation fund.

This plan ingeniously combines the drastic reduction of the surplus purchasing power with a mitigation of the social injustice that any currency conversion produces. The main objection raised against it has been the administrative complexity mostly created through the need of assessing every German asset for the war equalisation fund.

The British have not formulated an equally detailed plan, but it is well known that two radically opposed schools of thought exist among the British Control Commission. One wishes to adopt the simple device of a sharp price increase up to 50 per cent., coupled with a drastic conversion of the Reichsmark and a capital levy on large fortunes. It claims, for this plan, the advantage of administrative simplicity. Automatic conversion, price increases and a limited capital levy would drastically reduce the amount in circulation, without upsetting the general administrative structure. The same trend of thought appears to be reflected in a communication issued by the chief of the British Finance Division<sup>5</sup> which couples the announcement of a further delay in currency reform with the statement that budgets in the British zone were balanced and the Reichsmark was on sound foundations. It claims that

<sup>5</sup> See the *Economist* of December 7, 1946.

this result has been achieved both by strict economy and strict taxation, while the volume of currency was slowly decreasing.

A single day in Germany proves the utter artificiality of this picture. If, as in Britain, the budget covered the general balance of national income and expenditure, the illusion would soon disappear. The fact is that the official budgets operate in an increasingly isolated atmosphere of officially controlled income and expenditure, salaries, wages and prices, whereas real economic life is flowing uncontrolled outside these walls. The main objection against the apparently simple British currency reform project is, of course, its gross social injustice. The combination of currency conversion and price increase would leave the ordinary employee and workman in a state of utter misery. It would leave the medium and large capital owner in a proportionately increased position of privilege. It also assumes that the increasingly restive and active German workers' organisations would stand by and look on. It would finally make nonsense of the general principles associated with the British Labour Government.

Another school in the British Control Commission therefore favours a policy of blocking accounts generally, following the Soviet precedent, coupled with a progressive capital levy on all fortunes and assets, and a graduated unblocking of accounts, in accordance with needs and priorities. Given these measures, it regards a currency conversion as unnecessary. The assessment of assets would make no distinction between money, war damage claims, real property or other assets. It would therefore not privilege any particular form of wealth as against another.

It is obvious that the continued failure of the allies to agree steadily aggravates the problem, as the economic situation gets out of control and the official prices and wages structure becomes more and more artificial.

#### THE PROBLEM OF DE-INDUSTRIALISATION

The Level of Industry Plan<sup>6</sup> specified the general direction of the Potsdam Agreement to eliminate all war industries and the production of anything 'directly necessary to war economy,' and to reduce peace time production to a level essential for the maintenance

<sup>6</sup> Reproduced in Appendix, p. 333.

of a German living standard not exceeding the average of European living standards (outside Britain and the Soviet Union). The plan states three basic assumptions: (a) that the population of post-war Germany will be 66·5 millions, (b) that Germany will be treated as a single economic unit, (c) that exports from Germany will be acceptable in the international markets. Of these three assumptions the first has been roughly confirmed by the population census of October, 1946.<sup>6a</sup> The second assumption has so far entirely failed to materialise. The third must await the success of the first attempts to revive German foreign trade. So far the results have been meagre.

On the basis of these assumptions the plan prohibits the production of any arms and implements of war as well as aircraft and sea-going ships, and the provisions for the elimination of all capital equipment show fourteen specified items, among which are synthetic petrol and rubber, heavy machine tools and aluminium. The plan further determines the upper levels of a number of other industries. The one figure which has become generally known is the reduction of steel capacity to 7·5 million tons, with actual production not exceeding 5·8 million tons subject to annual review (this compares with a war-time production of approximately 22 million tons). Other figures are, however, no less essential. The level of machine tool production for example is reduced to 11·4 per cent. of 1938 capacity, the mechanical and electro engineering industry to 50 per cent. of 1938 productive capacity. In the case of other industries the upper level is fixed according to sales value in 1936. This implies a further heavy restriction in view of the loss of purchasing power of the Reichsmark since 1936. The only industries for which no restrictions are imposed are the building and the furniture and woodwork industries,<sup>7</sup> the glass and ceramics industry, bicycles and small motor-bicycles and potash. In addition, certain prohibited industries, that is to say, synthetic gasoline and oil, synthetic rubber and ball bearings, are provisionally permitted until sufficient imports can be obtained.

So far the material effect of this severe restrictionist plan has not been the cutting down of actual production, except in certain

<sup>6a</sup> Cf. Appendix, p. 352.

<sup>7</sup> The furniture industry in the West has until now been fully occupied but almost overwhelmingly for the use of the occupying forces.

specified fields. The main present production problem so far has been coal mining on which no restriction at all is imposed, and the steel industry which, owing to heavy destruction, shortage of coal and decreasing productivity of labour, has remained considerably below the permitted level. The main negative effect of the plan has been the psychology of restrictionism and the complete deflection of allied endeavour from the most vital tasks. Instead of concentration on the restoration of vital production capacities, the main effort was concentrated on the elaboration of limitations which even a year later were largely regarded as theoretical and displaced entirely by the desperate need not to keep German economy down but to keep it barely alive. There are at least five major criticisms of the basic economic policies as expressed in the Level of Industry Plan. First, there is the absolute prohibition of certain industries whose effect has already been severely felt. Foremost among them is the prohibition of any sea-going ships. This affects in particular the high sea fishing and whaling industry. Probably in this category also is the dismantling of certain cement plants declared as surplus, in view of a maximum capacity of 8 million tons of cement annually laid down in the Plan. Uncertainty and the threat of dismantling has a psychological effect far exceeding its economic significance. In the British zone, for example, an important chemical plant, which had developed the production of synthetic butter from coal by-products, was shut down and scheduled for dismantling. Subsequently production was permitted for a short period until it was again closed down for dismantling.<sup>8</sup>

Secondly, some restrictions have not yet had any immediate effect, but would have decisive long term repercussions. Foremost among them is steel capacity. The fatal error of the plan appears to be that it measures capacity without regard to the gigantic needs for reconstruction in the devastated industrial zones and the correspondingly increased needs for steel. Recent surveys in the

<sup>8</sup> Much energy is spent in the struggle between: (a) the Trade and Industry Division concerned; (b) the Reparations Division; (c) the German firm concerned; (d) the German economic authorities, which invariably plead for the retention of such plants on both social and economic grounds; (e) the employers' and workers' organisations. Among the many objects of struggle are the Krupp locomotive repair shops, the dockyard cranes at Hamburg and Kiel, the Hoesch works at Dortmund, and practically every firm concerned with mining equipment. In most of these instances the case against dismantling is overwhelming.

German economic press have put the need for steel production for peace needs at 14 million tons; allied proposals at the Moscow Conference varied from 10 to 12 million tons. (The French alone continue to oppose any upward revision.) The British Government proposals, which are supported by a recent report by the International Chamber of Commerce, recommend an annual production of 11 million tons. There is therefore fairly general agreement on the need for a drastic revision of the level of this key industry.

Thirdly, the assumption that the Plan is compatible with a German standard equal to the average European standard of living is fallacious. The *Economist* (April 6, 1946) claims that—taking into account the loss of territory east of the Oder-Neisse line and assuming full employment of the remaining industry—the standard of living would remain one-third below the European average. It reaches this conclusion by calculating (a) that industry and trade accounted for about 75 per cent. of Germany's national income, (b) that the now detached territory accounted for another 13–15 per cent. which must be written off.<sup>9</sup> Therefore even if the remaining German industries are fully employed and the yield from agricultural within the new frontiers remains at pre-war level—both of them highly questionable assumptions in view of the coal shortage, the vast destruction and the lack of fertilisers—the German national income would be about one-third below the European average of 1938.<sup>1</sup> Even if the gains from the elimination of war production and military needs were balanced against the loss of the eastern territory, the Saar and the reduction of industrial capacity to an overall level of 50–55 per cent., the now obvious fact that the remainder of industry and agriculture is far below its peacetime productive level makes this first major assumption of the plan fallacious.

Fourthly, the assumption that the development of agriculture and peaceful industries in Germany is possible in spite of a crippling

<sup>9</sup> To this must now be added the Saar, a highly productive area (including 10·5 per cent. of German pre-war coal production) which is, to all intents and purposes, economically a part of France.

<sup>1</sup> There is one weakness in this criticism: it ignores the vast proportion of industrial output formerly devoted to military purposes. In the first year of the war, for example, steel allocations for civilian needs amounted to 60 per cent. of the total production. In a normal pre-war year military needs may have accounted for about 25 per cent. of the total production.

reduction in Germany's heavy industry is questionable in the extreme. While the restrictions imposed upon consumers' industries are very small, the producers' industries are to be reduced to approximately 30 per cent. of pre-war capacity. As the *Economist* points out, 'It is a fallacy to suppose that consumers' industries can work at full capacity or even at two-thirds of their capacity if the supply of capital goods is reduced to slightly more than one-third of normal.' This applies in particular to the drastic reduction of machine tool capacity to a little more than one-tenth of pre-war capacity. For many years to come there will neither be the necessary imports available to make up for this deficiency, nor would Germany be able to pay for them if they were available.

The last major weakness is the assumption of the Plan regarding Germany's foreign trade. The Plan provides for exports in 1949 of 3 billion Reichsmark (at the 1936 rate). But 65 per cent. of all German exports were in the branches of industry most affected by the restrictions. The estimated expansion of exports produced by light industries would recover only one-tenth of the loss in exporting capacity. This would moreover mean a complete switch over of the direction of German exports from traditional to new markets, at a time of intense competition.

The new joint Anglo-American plan for the foreign trade of the two combined zones provides for an annual export programme of £300,000,000. This is the approximate value of German exports to Western Europe in 1930 but these exports came overwhelmingly from the Ruhr and from those industries which are either severely restricted or in a state of ruin. As it is put in a recent confidential German report, such exports as 'Nymphenburg China, photogenic lenses and aspirin are not sufficient. Machines of all kinds, including many machine tools, electrical equipment and coal and steel would have to be added.' This raises, however, a vital problem of allied, in particular British, economic policy which will be discussed in another connection.<sup>2</sup>

#### THE REPARATIONS PROBLEM

After the last war, the reparations issue was one of the limits of payments in kind and money which could be imposed upon

<sup>2</sup> Cf. p. 212 *et seq.*

Germany. The problem of reparations in money was eventually 'solved' by successive reductions and by the influx of vast loans from the creditor countries into Germany, facilitating her industrial re-equipment and re-armament. Reparations in kind, stimulated by the German inflation and the cheapness of her products, created trade and employment problems in other countries. This time the reparations issue is a fundamentally different one. Financial reparations are confined to the confiscation of external German assets. The main reparations problem is, on the one hand, that of the removal of industrial equipment, that is, the coupling of the reparations with the de-industrialisation issue; on the other hand, the question of reparations from current production. The Potsdam Agreement gives Soviet Russia full liberty in regard to removals from her own zone, a liberty of which she has made the fullest use. In addition, the Soviet Union is to receive 25 per cent. of surplus equipment from the West. This has given the Soviet Union a vested interest in de-industrialisation in the West, further stimulated by her deepening conflict with the Western powers and her consequent desire to weaken the West as much as possible. This part of the reparations issue thus became closely linked with the issue of de-industrialisation, and the stiffening resistance of the Western powers against Russian claims is caused not by the desire to withhold reparations from Russia but by the anxiety not to weaken the Western zone further and to create new dislocations and psychological upheavals at a time of worsening economic plight. As regards reparations from current production, Soviet Russia has applied this principle to the full in her own zone where the remaining industry is fully employed, but very largely for the satisfaction of Russian needs.<sup>3</sup> Russia is in fact, attempting both to have the cake and eat it. In her own zone, she has dismantled on a large scale and also takes the bulk of current production. She now wants to apply the same principle to the West, without having the political and administrative responsibilities which she has in

<sup>3</sup> On June 4, 1947, the spokesman of the City Administration of Berlin reported to the City Parliament that, out of the 1946 production in the Eastern zone, scarcely more than 10 per cent. had been made available for German consumers. A new demand for 2,000,000 tons of scrap iron, from the zone, including the Russian sector of Berlin, had just been made.

her own zone. At the Moscow Conference, Russia has claimed priority for reparations from current production in the Western zone. As both Britain and the U.S.A. have been compelled to pump foodstuffs and certain raw materials into their zones of occupation, they regard their repayment as the first charge on future German exports. Russia has countered with the argument that Britain and the U.S.A. have already received a large part of the German merchant fleet as well as patents and inventions which Mr. Molotov estimated at \$10,000,000,000. In addition, he claimed that the Western powers were taking coal and timber as reparations at a low price. The truth is that coal from the Ruhr is allocated by the European Coal Commission between German and foreign needs, and that Britain has received no coal at all. The powers have, by agreement, shared in the German merchant fleet. Patents and inventions collected by the Western zones are published and are obtainable to all allies on application. There remains the value of reparations obtained by drawing plans, sample machines and other items which do not appear on the list of patents and inventions and which should certainly be credited to Germany on reparations account. But these unaccounted benefits have accrued to all powers, in their respective zones.

The Yalta Agreement provided for reparations in kind, in the form of (a) removals of capital equipment; (b) goods from current production; (c) use of German labour. No further agreement was reached until the Potsdam Agreement, which does not mention reparations from current production, but stipulates (para. 19) that 'payment of reparations should leave enough resources to enable the German people to subsist without external assistance,' and that 'the proceeds of exports from current production and stock shall be available in the first place for payment for . . . imports.' As the Potsdam Agreement purports to implement the Yalta Agreement and has generally been treated by the three signatories as the basic document on the treatment of Germany, the Western Powers have a strong case in regarding reparations out of current production from the West as ranking after, firstly, restoration of a minimum subsistence level in Germany; secondly, repayment of allied imports.

The claim for reparations by removal of industrial equipment is justified by the Potsdam Agreement, as implemented by the Level of Industry Plan. But, as has been shown (p. 205), the whole foundation of the Level of Industry Plan is shaken, and the question of surplus equipment, in the light of German peace-time needs, has therefore been re-opened. Only the relatively small proportion of plants of an unquestionable war character remains unaffected. For the rest, the overwhelming and primary need for the Western powers is to prevent a further catastrophic decline in the economy of their zones. This is a technical as well as an economic and a psychological problem and it is for this reason alone that for the time being neither Britain nor the U.S.A. can take responsibility for the dismantling of any plants which are still productive and give employment. Once a revised level of industry is agreed, it will be possible to combine a new estimate of productive capacity with the necessary concentration and re-direction of both production and employment. Failing such agreement, reparations by removal of plant and industrial equipment must be stopped.

The question of reparations out of current production presents a different issue. In principle, the payment of reparations out of current production is the only sound way of repairing the ravages of the war caused by Germany. The major objection raised after the last war, that of dumping goods on other countries and creating unemployment, does not exist to-day. There is a desperate scarcity of both production and consumer goods everywhere in Europe, including Russia. The obvious solution would therefore be to impose on Germany reparations out of current production, for a limited period of five to ten years; but this presupposes the restoration of German production to a level of minimum subsistence, and this level is not attained as long as food rations are less than half of the minimum necessary for reasonable health and as long as the occupying powers are compelled to import vast quantities of foodstuffs to maintain even this grossly inadequate standard. Reparations from current production are therefore not available for the very period when they are most needed in Europe. The only exceptions at present are the coal production of the Ruhr,

of which a proportion which, over the last fifteen months, has varied between 15 per cent. and 25 per cent. goes to countries outside Germany, and timber, a wasting asset, as it leads to the gradual deforestation of Germany. If and when Germany's production allows for the resumption of reparations, the further problem arises whether the repayment of British and American import of foodstuffs and raw materials should be a first charge. Britain and the United States are probably right in contending that they are; but agreement with Russia might well be worth concession on this point which, by comparison with the overwhelming need to restore the German economy to some degree of health, seems of minor importance. Nor is the psychological effect of reparations out of current production to be compared with that of the dismantling of the means of livelihood.

#### THE BRITISH DILEMMA

For Russia it is more a political, than an economic decision, how far to encourage economic recovery in her zone of occupation. If she chooses to incorporate her zone into the greater economic orbit of the Soviet she can do so without economic fear. The export problem for Russia is so far of negligible proportions and her hunger for goods unlimited. That her policy is still undecided can be seen from the intermittent removal of German plants and thousands of skilled workers from Germany to Russia.<sup>6</sup> France has already incorporated the greater industrial part of her zone, the Saar, into her own orbit. Recovery of production in the coal industry of the Saar is more advanced than that of any other coal area in Europe. To the U.S., exports are so far of subordinate importance in relation to the general American economy, and the American zone—or her share in the cost of bizonal administration—can only play a small role in her general economic budget. Moreover, the need to provide for certain imports and credits may be more than balanced by the prospect of an export market for Virginia cotton<sup>7</sup> and the supply of foodstuffs as an additional outlet for surplus American farm produce

<sup>6</sup> The most notable example was the removal of a large part of the famous Zeiss optical works in Jena in winter, 1946, together with the majority of the technical staff and workers.

<sup>7</sup> For refinement and re-export from Germany.

in times of depression. For the United States, as the major producer and creditor country of the world, the U.S. zone presents essentially the same challenge as the rest of the impoverished world: a large scale investment of credits and materials in its recovery. This will be dependent on American conviction that the investment is worth while. In other words, the United States must be convinced that there will, eventually, be enough German exports to repay the investments.

The problem is entirely different for Britain. Faced with an increasing gap between foreign assets and exports on the one hand and imports on the other, the primary need for Britain is the drastic increase of exports. Britain must fight for new markets and recover old ones. On the other hand, Britain must reduce the burden of continuous imports to Germany at a cost which, coupled with the vast administrative apparatus of the Control Commission, amounts to over £100,000,000 a year. This is only possible by enabling her zone to pay its way. The British zone of Germany could do so only by exports; but the exporting capacity of this zone, which before the war was very great, consisted overwhelmingly of machines, electrical equipment, chemical products, optical instruments and of certain raw materials such as steel and coal. In regard to most of these industries, a revival of German export capacity is bound to clash with the need to stimulate British exports unless the main direction of German exports can be different from that of British exports. Pre-war figures are only of limited value since the British trade and exchange position is now infinitely more critical and compels Britain to close a gap between imports and exports which before the war, was largely covered by invisible exports and income from foreign investments. In 1935, for example, German exports to Britain amounted to over £30,000,000 (against nearly £19,000,000 British exports to Germany). By far the largest items of German exports were machinery, chemicals, leather and electrical goods. In all these fields, British industry must now make a big export effort while cutting down its own imports.

It is estimated that before the war German industry was complementary to British industry to the extent of about 25 per cent., but that the two industries collided in the foreign

markets only to a much smaller extent, mainly because of the concentration of German foreign trade on East and South East Europe. (Schacht's policy). This was part of the attempt to make Germany the industrial centre of the Continent. That very part of Europe, though in particular need both of capital equipment and consumer goods, is, at present, largely closed to the West, politically and economically.

The paramount need is, therefore, a clear decision on British policy, i.e., a long term adjustment between the British export drive and the need to lighten the British burden, politically and economically, through a reasonable recovery of German industry in the West. At present, there is no such plan or policy, and the conflicting pulls are reflected in the Control Commission. Some of its senior personnel feel themselves to be the watchdogs for British industry, others devote all their energies to help the zone on its feet. At present, the state of German industry is such that the problem is largely potential. As shown earlier on, the bulk of exports at present is coal and timber. But if the Anglo-U.S. export plan is pushed forward, the problem will soon become acute. It was brought into the open, but not solved, by a reply from Lord Pakenham to a demand from a leading British firm of wire manufacturers that German exports should be confined to raw materials. Lord Pakenham replied (June 22, 1947, Yorkshire Post) that any such policy would further increase the allied burden, that German exports were, in any case, greatly limited by conditions, and that unfair competition would be checked by the allies. While this is convincing, a far more concrete and comprehensive plan is needed. There is, of course, no necessary incompatibility between a stimulation of both British and German exports. It is estimated that, for at least five years, European needs of goods of all types will be in excess of all production available from Europe. The dilemma is created almost entirely by the disintegration of international trade, and the artificial sealing of so many natural outlets. The problem is therefore one of wider economic policy. There are two main objectives. One is the restoration of the economic links between the different parts of Germany, all of which are in desperate need of goods. The other, complementary one, is the reintegration of

Germany into a wider European economy and the use of German industrial capacity for international reconstruction.<sup>7a</sup>

For the immediate future, the destiny of the British zone is linked with that of the U.S. zone. American interest, as shown, is clearly in the revival of German exporting capacity.

For both powers, the following wider policy issues arise:—

- (1) The revival of the utmost possible economic links between Eastern and Western Germany, (a) on the assumption that the political unity of Germany can be restored, (b) that this political and administrative unity is not, for the time being attainable. Either alternative would mean the strengthening of economic links between Russia and the West.
- (2) The alternative assumption that Western Germany will, economically as well as politically, become increasingly separated from the East. In that case there are two alternatives: (a) the economic integration of Western Germany with continental Europe and the consequent development of her economic capacity and foreign trade as part of an economic union; (b) the inclusion of Western Germany in a general flow of international trade, including Britain, America and other continental countries.

On these wider policy aspects some further observations will be made in the concluding chapter. Its keynote must be the restoration of productivity. As stated in an investigation undertaken by the *Observer* (June 22, 1947), in conjunction with leading economic experts, the major European deficiencies to-day lie in the insufficiency of production of food, power and steel. In regard to the first, Germany can only make a limited contribution, although a better supply of fertilisers would considerably reduce the need for food imports. With the partial exception of phosphates—even this deficiency could be partly met through basic slag, a steel by-product, and is therefore linked with steel production—the main fertilisers (nitrogen and potash) could be made available in Germany herself,

<sup>7a</sup> A table of import percentages (Pep Broadsheet No. 256) shows that, even excluding the countries now in the Soviet sphere, the European countries derived from 40—60 per cent. of their imports of iron and steel, machinery and chemicals from Germany. The need has been greatly increased through wartime wear and destruction.

through increased production of nitrogen in existing plants, largely dependent on more coal, and through greater inter-zonal exchange; the main potash mines are in the Russian zone.

German production of coal, steel and power (the latter partly, but not entirely, dependent on coal) is, however, the major key to the problem; for the drastic slump in European coal production is largely due to the decline of the Ruhr production to about 46 per cent.; the steel famine is almost entirely due to the catastrophic decline in the Ruhr from a 1937 level of 13,500,000 to the present level of well under 3,000,000 tons.<sup>7b</sup>

While an allied agreement on the long-term objective would be an immense step forward, the allies must start with immediate remedies.

#### AN ASSESSMENT OF THE ECONOMIC POSITION

A recent report by a special committee of the International Chamber of Commerce (February, 1947) surveys the main aspects of the present economic plight and possible remedies.

The report firstly strongly urges the necessity for either a German or a Western Government to take responsibility for the political and economic life of the country. The report secondly urges the provision of new incentives for both German employers and workers. In this field, it recommends a reform of the money and price system, by a stop on all paper money issue, a currency conversion, decontrol and gradual increase in prices, coupled with an adjustment of wages and an eventual fixation of a foreign exchange value for the Mark. This proposal is in line with the conservative school of the British Control Commission, except for the recognition of an upward adjustment of wages together with prices. It is therefore subject to the same criticisms. Not surprisingly the report lays emphasis on much greater freedom for the German foreign trade instead of the present strict and incredibly complex system of controls over

<sup>7b</sup> In 1937, Germany contributed 3,627,000 tons to a world total of 13,100,000 tons of iron and steel exports. The world total in 1946 was under 7,000,000 (Germany nil.) The value of metal manufacture and machinery exports from Germany in 1937, was 255·2 mill. as against 192·6 mill. from U.K. and 334·5 mill. from U.S.A.! (Cf. the *World Today*, August 1947, pp. 351-352.)

every single transaction which involves six different stages, from application to completion.<sup>8</sup> It recommends a system under which the Germans will be definitely interested in export: (a) by being free to make business contacts direct with foreign customers and suppliers; (b) by obtaining a share in the vast difference between the inland price—with which they are at present credited—and the world market price at which the goods are sold; (c) by coupling the export of German products with the supply of fresh raw materials. Given such a change the committee recommends that German authorities should be responsible for balancing exports and imports and that allied importation of raw materials should cease.

The committee thirdly recommends a wage system by which the wage earner obtains increased rations for increased output. This system has already been introduced for the coal industry, since January, 1947,<sup>8a</sup> and for a few months it led to a substantial increase in production until it was halted by exhaustion and the general economic and psychological slump in the spring of 1947. The committee further recommends a definite and immediate time limit for the completion of all dismantling of German industrial equipment, as a necessary condition for any ordered revival of German economy. It recommends the raising of the authorised German steel capacity to 11,000,000 tons annually. It stresses the need to allow German economy to develop not in isolation but as part of the European economy. In this connection it criticises the diversion of traffic from Rhine ports which has already gravely hampered neighbouring countries such as Belgium and Holland.<sup>8b</sup> As regards some issues of social as well as economic significance, the committee recommends the transfer of control of the heavy industries to the state-owned bank, the Reichskreditgesellschaft, which would be under allied control, and it generally recommends the speedy reduction of government controls and the return to a system of free enterprise.

<sup>8</sup> The French have from the beginning concentrated on making their zone profitable. It is not surprising, therefore, that some valuable chemical products from the French zone are available in London. The same products could not be obtained from the Anglo-American zone.

<sup>8a</sup> See p. 197.

<sup>8b</sup> A similar plea was forcefully made by the Belgian, and supported by the Dutch and Czech, delegations at Geneva (Economic Commission for Europe, July 10, 1947).

There will be general agreement with the recommendations on the raising of German industrial capacity, the provisions of incentives for increased industrial output and export, the termination of the uncertainties about reparations and the drastic simplification of the control machinery, especially in regard to foreign trade.

The necessity of greater freedom of enterprise in foreign trade, under a general government plan, will be generally accepted as necessary; but general decontrol, in an economy of desperate scarcity, can, of course, only be bought at the price of gross inequalities of distribution. No responsible control authority could contemplate this, for years to come. The alternative is to create conditions which enable controls to be both simpler and more effective. This is largely dependent upon the restoration of sound currency conditions and above all an increasing supply of consumer goods which makes the need for black market and other illegal transactions less desperate than at present. This is recognised by the committee. There will also be support for its sharp criticism of excessive economic decentralisation, with the consequent inflation of Land administrations and vested interests in particularism, at the expense of any effective economic control over a wider area.

The belief that anything would be achieved by the control of industrial shares through an allied controlled state bank completely ignores the vital ethical and political aspects of socialisation which involve the whole question of the participation of the community and of the workers' organisations in management and economic planning. Nor is this merely a political or social problem. The will to production of the German miners is affected by their increasing bitterness about the apparent failure to proceed with socialisation. That this is a real factor, has been shown in Britain.

There is all but universal agreement on the bankruptcy of the policy symbolised by the Level of Industry Plan. On the desperate necessity for an increase in the supply of vital commodities for a revival of German foreign trade, her re-integration in the European economic system, an increase of her industrial activity, a simplification of administration, there can now be little disagreement in principle, although there are a host of practical difficulties. The main practical problem is the readiness, especially of the United States, to make the necessary investments of money and materials,

on a long term basis, and on a scale far exceeding the present emergency shipments. This can conceivably be expected only if there is a reasonable prospect of Germany as a whole, or, at least Western Germany, becoming a going concern. It is quite clear from the foregoing analysis that such prospect is dependent on Germany's integration in a wider European reconstruction plan. The economic problem thus becomes part of the wider political problem. The alternatives before the Powers will be discussed in the concluding chapter.

#### THE SECURITY ASPECT

There remains one major matter of principle, a problem at the bottom of the whole disastrous trend of allied policy which it is now attempted to reverse. How can the necessary re-activation of German economic life be reconciled with the requirements of allied security ? It was the lesson of the failure of the last peace and the fear of yet another rapid German recovery which led to the whole idea of a drastic restriction of German industrial capacity and the immensely complex allied control apparatus.

It is now clear that the danger to allied security, arising from a people of nearly 70 million, herded together into two-thirds of their former area and living in misery and despair, far outweighs the dangers of an increase in industrial activity. But the risk of a swing of the pendulum to the other extreme cannot be ignored. After the last war, the world witnessed the grotesque spectacle of vast loans from private banks and other investors in the allied and neutral countries re-equipping German industry, while money reparations were still going out. Beyond doubt, the danger of an economically strong Germany is to-day remote, as compared with the danger of complete and imminent collapse. But the potential strength of Germany, whether united or divided, is bound to remain a vital political and economic factor in the heart of Europe, and the situation might change rapidly once the immediate catastrophe is overcome.

What alternatives are there to the present system of control ? Apart from the allied divisions which have been fully discussed, it has revealed three major weaknesses: first, an excessive control

apparatus particularly in the British zone; secondly, a paralysing policy of economic restrictionism; thirdly, the dangerous effect of political, economic and mental isolation upon the Germans.

The first question is whether the policy of imposing upper levels on industrial capacity should be scrapped altogether. This is advocated by as balanced and influential an organ as the *Economist*, and it has in its favour the obvious difficulty of fixing and controlling any levels of industry under rapidly changing conditions. It would also remove the paradoxical position of imposing artificial restrictions on production in a world which desperately needs commodities of all sorts. A second best solution would be the scrapping of the vast majority of upper levels imposed in the Level of Industry Plan and in the raising of those upper levels which are to remain. The raising of the key level of steel production to 11,000,000 or 12,000,000 tons which is now generally advocated would leave room for development for a number of years, for the present capacity is far below the permitted level of 5·8 million tons. Even the retention of an upper level on one vital material such as steel would make unnecessary the vast apparatus of control over every single material and every single industry, which is the main reason of existence for the vast allied control staffs. Instead, small staffs of highly trained technical inspectors could concentrate on a number of key controls. The specification of the necessary key controls is obviously a matter for detailed study by experts. But the following essential controls would make possible, firstly, a drastic reduction of the control machinery; secondly, a free expansion of German economy within reasonable limits; thirdly, an effective security control:

- (1) The absolute prohibition of certain specific war industries and of aircraft production should be maintained.
- (2) There must be control over the location of certain key industries such as power stations; experience of the war has shown that some power stations were located in such a way as to be almost invulnerable. No war economy can be built up without a strategic system of power generation.
- (3) Control Council Law No. 25 has established a firm quadripartite foundation for the control of scientific research. The law forbids all research of a primarily military character and on such subjects as nuclear physics, rocket propulsions, radar systems.

All four powers maintain close control over research institutes, although none has hesitated to enlist German scientists prominent in the forbidden activities in its own service. A small staff of highly skilled allied supervisors, with full powers of inspection, could easily control the development of German scientific research. Together with this there must be a revival of the legitimate international protection for the inventor. It is well known that the suspension of international patent protection and the wholesale and indiscriminate confiscation of patents, trade marks, sample machines and other inventions is driving the German inventor and manufacturer underground. It is liable to make him a natural ally of new political resistance movements. The remainder will be driven to the different allied countries and may become instruments of rival military preparations. (4) Control of statistics of industrial production is a vital element in a system of remote control which does not cramp economic life. (5) Control over the total volume of foreign trade is inevitable as long as the German Mark has no international exchange value and the allies must continue to pump vital imports into Germany. Long-term control of the volume and direction of foreign trade would, however, be acceptable and reasonable only as part of a general international economic plan. It is certainly vital that the detailed control over every single transaction should cease, with the exception of some key materials, such as certain alloys essential to war production. (6) If any upper levels of industry should be maintained, for example, on steel, the upper levels on such products as rubber, paper, textiles and any consumer industry, together with the limitations on cement and certain chemicals, should be removed forthwith. If levels on any considerable number of products should be maintained, they would need upward revision in line with the level of the steel industry, for it has long been recognised that the production of basic producer and consumer industries must be kept in a reasonable proportion, or else a paralysis of one would lead to total paralysis. (7) The key to security is the necessity for the unrestricted right of allied inspection. After the last war, it was the increased impotence of the Allied Control Commission in gaining access to the processes of German production and administration which vitiated

its control. They were dependent on German statistics, production figures and administrative organisation. More and more they had to apply for permission to inspect certain plants and the Germans had ample opportunities for camouflage. The situation now is vitally different. It is essential that teams of allied inspectors<sup>9</sup> should be able to inspect, without notice and without qualitative limitation, not only factories, but also economic organisations, in particular the Trade Associations (*Wirtschaftsverbände*). They could thus compare production on the ground with the figures supplied by statistics. Four-power commissions have at last begun to survey industrial disarmament. It appears, however, that in the Soviet zone they can inspect only selected sites. Nor have they any powers beyond mere investigation. The formation of a small but competent technical staff operating jointly in the four zones would be a vital step both towards an effective system of control and towards allied collaboration in the administration of Germany.

Given such control, two economic factors provide a guarantee against German aggression which is infinitely more effective than the complicated network of upper levels of industry, and free from its objectionable philosophy and its administrative complexities.

One is the dependence of the German steel industry, in particular the Ruhr, on imported ore. In 1937, 86 per cent. of its total supplies of iron ore came from outside Germany (62 per cent. from Sweden and Norway, 6 per cent. from France).<sup>10</sup> This dependence has been increased by the loss of the iron ore production of Silesia and the Saar. The control of iron ore imports through an international organisation should be easy and effective.

The other is the impossibility, for Germany west of the Oder-Neisse line, even to attempt self-sufficiency in bread grains, which has been part of German military strategy since Bismarck. Economically, Germany might fare much better by concentrating on dairy produce and intensive cultivation; agricultural autarchy was both wasteful and expensive. But dependence on grain imports is an effective guarantee against aggression.<sup>11</sup>

<sup>9</sup> They might be composed of a technical expert, an accountant and a trained intelligence officer.

<sup>10</sup> Pep Broadsheet No. 256 (October, 1946), p. 19.

<sup>11</sup> Cf. Dr. Levy, *The Times*, July 14, 1947.

PART THREE  
THE BALANCE SHEET

CHAPTER 13

GERMAN REACTIONS TO ALLIED MILITARY  
GOVERNMENT

THIS chapter makes no attempt to discuss fully the intricate and many-sided problem of the German mind. It is concerned with the reaction of Germans to allied occupation during the first two years after the collapse of the Hitler regime, that is with a specific historic situation.

Any such discussion must, however, start from certain assumptions. The underlying assumption—without which this chapter would make little sense—is that Germans are not altogether ‘hopeless’ as a nation. To the present author such a conception—prevalent immediately after both world wars—is a misreading of history which has witnessed aggression and war from time immemorial. Seldom has the fear of war been greater than at present, after the elimination of Germany as an aggressor. It also means the denial of any sane conception of international relations and of the fundamental conceptions of Christian ethics. (This book is based on the belief that Germans are no more all of one kind than any other people, and that in the German people, as in others, there are potentialities for war and peace, for barbarism and civilisation, for goodness and wickedness.)

This does not mean a denial of the specific menace which Germany has presented to the world since the establishment of the new Empire, nor of certain group characteristics developed during this period. The difference between such a conception and that of incurable qualities lies only—and that is a vital difference—in the hope of curability and in the refusal to put a rubber stamp on a whole nation.

Intimately connected with this approach is the complete rejection of the thesis of equal collective guilt of all Germans for the war, a thesis whose moral foundation is no less objectionable than its practical effect has been disastrous. None of the allied

Governments, certainly not the British Government, has ever officially, or even semi-officially, adopted this thesis. But in the psychologically decisive first year of the occupation it gained much popularity, even in high quarters. A clear and frank statement, bringing out the distinction between guilt and responsibility (see below) would even now clear the air. Such theories have often been the reaction to resentment or personal suffering, but often enough they have been a cheap and convenient excuse for licentious behaviour. The thesis of collective guilt was not only an insult to the hundreds of thousands of Germans who had died or suffered persecution under a regime of a type which neither the British nor the Americans had ever experienced;<sup>1</sup> it also made one of the most vital tasks, that of putting full trust in and giving corresponding influence to decided German anti-Nazis, far more difficult. It greatly obscured important considerations of political psychology, such as the question of how an average person behaves under threat of dismissal from a job or retaliation against his family. This impeded a balanced approach to the vital problem of denazification.

Only he who respects the German anti-Nazi who has suffered for his convictions with the same admiration or even humility as a member of any allied nation, can properly assess the debasement of the Nazi system and show that blend of firmness and humaneness which is infinitely more effective than either indiscriminate bullying or sloppy sentimentalism. For the last ten years have shown clearly that emotional love and equally emotional hatred of everything German are dangerously close to each other. The thesis of collective guilt also implies an elementary legal confusion between collective guilt and collective responsibility. It was vital to the allied approach, as expressed in the Yalta Conference, the Potsdam Agreement and the Declarations on the assumption of military government, that the German state and nation would be collectively responsible for the consequences of the war. This is a logical result of the responsibility of a people for the actions of its government. There are many forms of legal liability, in international

<sup>1</sup> Russell Hill (Struggle for Germany, p. 50) gives the total number of German political concentration camp and prison inmates as 800,000. The official figure (from German naval documents) of political leaders killed after the 20 July Putsch is 5,000.

law and in all legal systems, based upon the commission or imputation of an act, without the imputation of criminal guilt. Collective guilt, on the other hand, meant a collective moral and legal judgment on the behaviour of 70,000,000 people, a conception contrary to civilised notions of justice. The vast majority of Germans could understand their collective responsibility for the consequences of the war, and their duty to make reparations, and leading anti-Nazis have coupled this duty with the future function of Germany as a servant of wider European and international needs. The conception of collective guilt, on the other hand, has rightly embittered those who have suffered greatly during twelve years, in many cases the most important years of their lives, while it has given a convenient excuse to the hundreds of thousands whose consciences were less clear. In practice, of course, this thesis could not possibly be sustained for any length of time. The allies could not but rely on some sections of the Germans and the whole process of denazification was developed so as to differentiate between one type of German and another. But the moral effect of the initial thesis was calamitous.

#### SOME GERMAN CHARACTER GENERALISATIONS

While the thesis of equal collective guilt is vicious and false, it is possible to couple certain collective characteristics of the German people with the German reaction to allied military government. They are neither universal nor unalterable attributes of Germans, but they have accompanied the establishment of Germany as a great modern state and world power.

There is firstly the dangerous differentiation made by large numbers of Germans between private and collective morality. This is far from being a purely national vice. There is not a single nation whose collective standards of behaviour are in any way comparable to the moral standards of the individuals who compose a nation. Many Germans have accepted, and it has been one of the principal doctrines of the Nazi regime to teach, a complete separation between the moral standards of a citizen in his private life, and the moral standards of the same citizen as a member of the nation and in his duties to the state. German 'organic' theories of the state

have a considerable responsibility for the development of the myth of the state, an organism with a personality and purpose distinct from the sum of its members. The Nazis only had to personify the myth in the Führer to complete the mischief. The allies were rightly shocked by the dismal spectacle of impeccable and friendly fathers, husbands, musicians or animal lovers who, as concentration camp commandants, would murder in cold blood thousands of innocent people with the simple excuse that they were acting under orders or in fulfilment of their duties towards the state. Connected with this attitude is the astonishing disinclination of even strongly left-wing Germans to revolt against authority. This leads to the second point—the excess of disciplined obedience which is certainly a marked characteristic of modern Germans. Spontaneous action and defiance of authority is a rare event in modern German history. Its absence caused the revolution of 1918 to terminate in a mild constitutional reform; it also caused the majority of Germans who, until the end rejected Nazi principles, to accept authority, however reluctantly, once the new government had seized power. Moreover, Hitler had skilfully exploited this attitude by using a semi-legal and semi-constitutional method of coming to power. He showed profound psychology in rejecting openly revolutionary methods. On the one occasion when the organised action of the German working class decisively defeated militarism between the two wars, during the Kapp Putsch in 1920, the workers were sustained by the consciousness that they stood for the legitimate government against rebels.

The tradition of disciplined obedience has very greatly helped the allies in the initial phase of military government. Without it, the troubles which, after more than two years, began to assume considerable proportions in mass demonstrations, strikes and hunger marches would have become evident much earlier.

A third factor, which indeed is far from applicable to all Germans, but affects others than Nazis or near-Nazis, and especially the German middle class, is an inclination to racial arrogance. This does not express itself predominantly in anti-semitism. German anti-semitism is partly a reaction, mainly by the lower middle class, to the particularly close association of Jews with German life in all its branches, and partly a convenient outlet for economic

frustration, inferiority feelings and social discontent, for those who dislike social revolution. This, too, was carefully exploited by the Nazi regime. The debacle of 1945 might have been the best cure for any national or racial arrogance on the part of the Germans. If it is surprising and distressing to hear Germans of many different views and classes speak again of the 'Polengesindel,' this attitude has been fostered by the mass expulsion of Germans from purely German territory, the cession of the East up to the Oder-Neisse line, and the retention in Germany of the worst foreign elements, in conditions of idleness. There can certainly be no compromise with such ideas, but the remedy does not lie in racial retaliation, which only leads to a swing of the pendulum backwards and forwards, but in the quiet demonstration of a different attitude by the conquerors.

A very important factor in the assessment of German reactions to military government is, fourthly, an inclination to power worship. This does not mean that the average German has the lust for power which has characterised the Nazi leaders and the other dominant groups of the German state; it means that he believes that politics is a matter of power conflicts. This may contrast strangely with the general idealism, romanticism and sentimentalism in the life and attitude of countless individual Germans, but as stressed before, Germans differentiate strongly between individual and collective values. Considering the deficiency of mature political education, especially during the twelve years of the Hitler regime, it is astonishing to see the acuteness with which the average German diagnoses the power conflicts in the world at present, in which he finds ample confirmation for his belief.

The behaviour of Germans collectively is lastly marked by a disturbing contrast between excessive arrogance and excessive humility. Jews, political opponents and the peoples which came under the Nazi yoke before and during the war witnessed the cold and sneering arrogance; the allies, immediately after the occupation, witnessed the utter humility. The psychologist will not be surprised by these contrasts; both attitudes spring from a fundamental lack of self-assurance. Its sources are manifold: they include the political humiliation and division of centuries, the suddenness of

Germany's accession to power and wealth, the impressiveness of German abilities in the fields of war, science, art, industry, the absence of long training and experience in political and civil responsibility, the extensive deference to rank and title, itself a result of the predominance of military values. Whatever the reasons, the result cannot be doubted. It causes the tendency to self-pity which so many allied administrators and visitors have observed with dismay.

#### CHANGES IN THE GERMAN ATTITUDE, SINCE THE BEGINNING OF MILITARY GOVERNMENT

During the first six months of military government, all the allies witnessed an almost embarrassing readiness of the overwhelming majority of Germans to accept military occupation and an entirely new regime.

The collapse of mental as well as military resistance was complete. The motives were mixed. Some of the considerations just noted played a considerable part: the trained attitude of obedience to those in authority; the respect for sheer power which the allies displayed so overwhelmingly in the last few months; the sudden transition from arrogance to humility. There were both baser and nobler motives as well. In the first six months the sheer relief from the continuous ordeal of day and night bombing was overwhelming. To this relief was added the genuine disgust at the utter barbaric nihilism displayed by the Nazis in defeat. The most stupid German could see and understand the senseless cruelty of the destruction of towns, bridges, waterways—which was bound to retard recovery by years—in the last few weeks when there was no hope whatsoever of successful resistance. Suddenly the real character of the Nazi regime was revealed even to the dullest: its contempt for its own people, its will to destruction. Many simply hoped for food and a better life, especially from the Western allies. Practically everyone had listened to the highly effective broadcasts from London. But there were, on the other side, vast numbers of those who genuinely saw in allied military occupation the redemption from a period of mental darkness and moral corruption. The Weimar Republic had only lived for a little over

fourteen years, and it had been feeble and hesitant. But its ideas of democracy, liberal tolerance and social progress had influenced millions of Germans who remembered the concrete results of many measures of social reforms and an era of great mental and political freedom. The Western allies were seen as those who would continue the uncompleted task of democratic education. An important minority, on the other hand, looked to Russia as the apostle of radical socialism. As in other countries, the conception of the radical left was not that of the nationalist Russia of recent years, but of the early revolutionary Russia, which had achieved socialism under incredible difficulties and in a hostile world. The result of these different and often conflicting motives was a unique readiness for a completely new start. The danger was that too much was expected of the allies—more than could humanly be expected and achieved. But the psychological moment was there, and the reasons for the allied failure to use the opportunity have already been discussed.<sup>1</sup>

The psychological change after two years is radical. Excessive hope and obedience has given way to cynicism, weariness and increasing defiance. There are manifold reasons for this which can only briefly be enumerated: one must place first the present physical condition of the vast majority of Germans—the state of hunger and misery which affects at least the overwhelming majority of town populations. During the first year, these people had both physical and mental reserves; these are now exhausted, and in the bitterness of distress it is difficult to preserve sane judgment; the tendency to attribute the blame to those in power, that is, to military government, is great. It must, however, be stressed that the German political and social organisations, in particular the trade unions, have consistently attempted to exercise a moderating influence and that it is only some extreme sections of the right and left which have exploited this situation for unashamed propaganda.<sup>2</sup> But the situation is worsening. As the German

<sup>1</sup> See Chapter 13.

<sup>2</sup> An example is the speech of the Communist trade union leader, Hoffmann of Remscheid, in May, 1947, which accused the Western allies of deliberate alliance with German reactionary interests in order to reduce the German working class to misery.

worker witnesses the blowing up of dockyards, the concentration of men and materials on the abortive 'Hamburg project' or the dismantling of factories which are his livelihood and whose production is needed, he is driven into nationalist opposition.<sup>3</sup> There is nothing more ominous than the relentless way in which allied policy drives the organised German working class—the stronghold of social democracy and internationalism—into a nationalist radicalism. The main beneficiaries may be the communists who now skilfully blend nationalism and radical socialism.

The second and hardly less important reason is the lack of purpose and hope. After two years of military government, Germans simply do not know what their future or their function in European affairs is to be. They do not and cannot know whether—however hard their conditions of work and life—they will become a part of either an integrated European continent, of Western Europe, or whether the four zones will become separate appendages of the four occupying powers. They do not know whether they will continue to live in physical and mental isolation or become a part of an international community. Physical misery can be mitigated by the sense of hope. Absence of hope increases the consciousness of physical misery. Nor is an assured standard of living a full substitute for an absence of moral purpose. It is generally admitted that, despite the immediate preoccupation with food and housing, the German miners feel acutely about the issue of socialisation, which to them is a vital aspect of the future. Admirable efforts are being made, in particular by the British educational authorities, to bring the leaders of churches, parties, universities, youth movements, trade unions into renewed contact with the outer world. But this does not affect the average German.

The disastrous effect of the thesis of collective guilt has already been noted. This thesis has been a source of perpetual discouragement to those most eager to collaborate with the victors, while it has been a source of cynical encouragement to Nazis and near-Nazis. The collective guilt thesis derives such justification as might conceivably be claimed for it from a consciousness of corresponding

<sup>3</sup> Trade union objection to participation in the dismantling of factories is increasing.

moral superiority of the allies. Germans were soon confirmed in their resistance to this thesis by the increasingly obvious discrepancy between the proclaimed standards of the allies and reality. Almost from the beginning of the occupation, the power conflicts between the allies became evident. Simultaneously with the accusations at Nuremberg and the numerous smaller trials of Germans, for use of slave labour, came the mass expulsions of Germans, largely from purely German territory.<sup>4</sup> Much of it was morally justified but much of it could not but appear as Nazi policy in reverse. The recent revelation that, at Yalta, the allies agreed on the export of German labour for reparations has strengthened this feeling. Another vital factor in the propaganda, in particular of the Western allies, has been the attack against the Nazi destruction of the rule of law and the preoccupation of the allies with its restoration. Yet Germans witnessed daily for many months the arbitrariness of denazification, arrests without trial, the indiscriminate requisitioning of houses and property, the abuse of power by occupation forces of all nations and types. Increasing numbers began to re-acquire the shattered faith in the reality of power as the only determining factor in politics. They looked at moral ideals as the convenient cloak for power conflicts, and cynicism became rampant again. Those who had genuinely believed and waited for the revival of democratic principles by the allies were bitterly disillusioned. The others conveniently seized upon these factors to indulge in self-pity, forgetting the terrible record of the Hitler regime. Of the remaining influential writers, some, like Jünger, have always been on the borderline between nationalism and internationalism, romanticism and nihilism. But outstanding anti-Nazis, like Wiechert and Thiess, are becoming scarcely less bitter and disillusioned.

The outstanding result of these various developments is a double one: Germans increasingly appraise Germany's prospects again in terms of power. None but an insane minority expect any restoration of Germany's position as a world power, at least for generations. But, with the deepening of the conflict between Russia and the Western powers grows the feeling that Germany may, after all, be 'Das Zünglein an der Wage' (the fulcrum). Very soon after the

<sup>4</sup> The plan of the Control Council provided for the transfer of 6,500,000 Germans.

occupation, one could notice rumours which have been increasing in volume and intensity, all based on the conviction of a conflict between Russia and the Western powers, and all assuming that Germany would be used, economically and militarily, in this conflict. To the internationalist as well as to the genuine German patriot, this was a cause for dismay. It means Germany as a potential battlefield in a war of annihilation, and a division of Germany into two hostile halves. But here a second factor comes in, the moral significance of which must not be underrated: the gravest effect of Nazi education has probably been the disruption of any sense of moral values. It has subtly undermined not only humanitarian Christian and democratic values; it has sapped the roots even of patriotism. To the close observer of present-day Germany nothing is more alarming than the emergence of a new 'Landsknecht' mentality, the professional who believes in success and power alone and will give his services to whoever wants them. There are in particular vast numbers of ex-officers and ex-soldiers whose métier is soldiering, and there are large numbers of engineers, technicians, scientists and members of other professions who see no hope for certain employment in a peaceful and ordered world. A great number of these will fight or work for America, Britain, France or Russia. They will accept the offer of the highest bidder. Some will justify it by idealistic phrases which always come ready to hand. Others will accept such development without self-delusion. Already a nucleus of the German army captured at Stalingrad appears to work for the Russians. The British or Americans could at any time recruit a strong force of competent soldiers if they wished. A limited number of German technicians and scientists are being used by all the allies. This is the gravest and perhaps most significant symptom of an attitude of disillusionment and cynical abandonment of moral values.

Lastly, the economic situation undermines moral and social standards. As wars, revolutions and other upheavals have so often shown, common distress can enoble men where they are linked by a common purpose. Without it, misery divides and kindles the worst instincts. The circumstances of the present economic plight of Germany are such as to cause a feeling of impotence and

apathy among Germans. It also strikes them unequally. Joint effort is superseded by the struggle for individual survival; but the majority of workers, employees, civil servants, and townspeople in general faces a privileged minority, mainly of farmers, manufacturers and shopkeepers, who feel less and less inhibited in exploiting their situation. Unselfishness and idealism have not altogether disappeared; they are now mainly found in small groups held together by common values, such as religious communities, groups of educationalists, or youth associations. But they have to fight desperately, not to be submerged in the flood.

Among those Germans who have not abandoned their ideals and sense of values, reactions to Military Government naturally differ according to their general beliefs. To any but the extreme left, the greatest disillusionment in the Russian zone is the continued absence of personal security and the continuation of some of the Gestapo methods of the Nazi regime. To the left, on the other hand, the main disappointment in the West is the failure of any new social policy. They remember the half-heartedness of the Weimar Republic and the exploitation of this half-heartedness in dealing with the military and social problems of the old Germany, by the classes which became the pillars of the Nazi regime. They note with dismay that the Western allies have indeed taken negative and individual action in the name of denazification, but have completely failed to stand for a new progressive social order. There is lastly a growing measure of disappointment with the new German administration. This is largely unfair because, after the ruthless policy of extermination practised by the Nazi regime and after the ravages of war and time, there is a desperate shortage of capable administrators, while the younger generation must be trained from the beginning. Moreover, the German administrators have so far had little opportunity of showing what they can do, hampered as they are by restrictions and appalling physical conditions, against which even the most brilliant government would be helpless. But there is genuine and widespread bitterness against the inflated growth of administrative authorities in a bankrupt economy. This is, to a very large extent, the fault of the allies. By failing to unite the zones, and by imposing upon Germany the

policy of decentralisation, they have been responsible for the multiplication of bureaucracies around the different Länder. They have encouraged particularist interests and a host of new ministries.

### PROSPECTS

Many of the possibilities of the first six months of occupation are now irrevocably lost. The allies have lost their nimbus, and faith in the superiority of democracy has waned. The first condition of any restoration of a constructive state of mind among Germans is a reasonable economic recovery. Against the present background of hunger and misery, it is impossible to expect any real 're-education.' The restoration of such standards however, vital though it is, would not in itself be enough. It would achieve little without the restoration of a sense of purpose. This means plainly and squarely the reintegration of Germany, politically, socially and economically, into the European community. It has been shown that such reintegration is a sheer economic necessity from the point of view of allied military government. It is an equally strong psychological necessity for Germans. The present sense of physical and mental isolation has a disastrous effect, and it is directly conducive to the 'Landsknecht' mentality and the cynical outlook which has been described earlier on. The imposition of reparations and other material burdens upon Germany must be coupled with giving to Germany a burning sense of responsibility and of the obligation to work for European recovery.

Sooner or later the problem of German emigration must be tackled. Individually, Germans have always been welcome settlers as farmers, craftsmen, engineers, scientists. Foreign countries have every reason to be on their guard against a repetition of the organised treachery of the 'Auslandsdeutsche' under the Nazi regime. The task of an internationally controlled emigration policy must be the dispersal of German immigrants in such a way that old group loyalties are not preserved.

## CHAPTER 14

### BALANCE SHEET

THE perpetual tension between power politics and ideology applies in a particular degree to the Military Government of Germany. The annihilation of German military and political power and the consequent removal of a threat to the security of the allies is the one major purpose; the re-education of Germans in such a way as to reintegrate Germany in the family of nations is the other. The pursuit of these two objectives requires two fundamentally different techniques, the technique of force and the technique of persuasion. Their confusion has largely vitiated the greater purposes of military government.

From a short-term point of view, the completion of the military victory of Germany through the perpetuation of her state of military impotence, has been largely accomplished. While a workable definition of war industries remains a problem, the utter economic exhaustion of Germany will prevent it for many years from developing into any substantial threat to peace.

From a long-term point of view, the solution of the physical security problem is far more questionable. Firstly, the complete collapse and disarmament of the most powerful state in Europe has created a political and military vacuum in the heart of Europe, which should have been filled by a joint allied security control, as a token of the international policing envisaged in the Charter of the United Nations; this has not materialised. There have been four separate occupation forces and systems. Quite recently, the Control Council has reported the failure of the four powers to agree even on the respective sizes of the occupation forces. The Russians demand that the combined Anglo-American occupation forces should not exceed the Russian forces. This means thinking in terms of antagonistic rather than of joint forces. The primary consideration in the estimate of occupation forces for Germany is not at present the number needed to keep Germany down but the number needed to keep an equilibrium as between the Russians on the one hand, the British and Americans on the other, with France still manœuvring

for position. If the conflict deepens, there looms the terrible danger of the allies strengthening their respective zones as part of their own military preparations.

An even greater threat to security is, secondly, the growing despair of the German people. Mass demonstrations, strikes, protest meetings, the general attitude of bitterness and hostility, require a strengthening of armed control. The greatest security is that arising from confidence. There is no halfway house between a condition which restores a situation of peaceful activity and a reasonable state of living, and a policy of gradual extermination. The latter alternative has not been contemplated by any of the allies as a conscious instrument of policy. It is, none the less, the only alternative to a policy of reconstruction. It is inconceivable that the German people will continue to exist in the present state for any length of time. With the modern means of concentration of power, and the herding together of large proportions of the population in cities, it is possible to exterminate peoples, as the Nazis have shown and would have shown more fully had they had more time. Beyond a certain state of weakness and exhaustion, people are bound to lose the will to resistance. Extermination need not proceed dramatically, through gas chambers and mass executions; it can be no less effective through the gradual sapping of vitality. This, then, is one method of settling the German problem for all time. It would be degrading to prove that this is not and cannot be allied policy. Yet, the Germans are increasingly convinced that it is.<sup>1</sup> If, however, policy is directed towards the preservation of the vitality, the will to live and to work of the German people, the security problem will become more acute. They will be increasingly restless and aggressive, strengthened by the consciousness of having elementary moral justice on their side. Defeat and weakness always give a moral advantage. Germans are well aware of the growing uneasiness of thousands of control personnel who dislike living sheltered in the midst of a misery which is, partly at least, the result of policy. The long-term security problem is therefore inevitably bound up with the revival

<sup>1</sup> 'Der Tommy will uns fertigmachen' (the Tommy wants to finish us) is a current saying in the British zone.

of German economy and social life to a degree which ensures contentment without creating a new war potential.<sup>2</sup>

The moral failure of the occupation is more immediately apparent.

The few joint measures of the Control Council, in such fields as denazification, revival of political parties and trade unions, re-organisation of justice, do not give a sufficiently coherent picture of the blend of political, social and economic ideals which the four powers might have achieved. With the collapse of joint control, the major collective failure has been a twofold one: the spectacle of allied disunity, and some of the principles adopted by the allies in their policy towards Germany.

Allied disunity has, from the beginning, been an ever-present reminder to the Germans that power politics is more real than moral re-education. The recognition that the allies in Germany were increasingly concerned with their own conflicts and manœuvring for position, seems an indirect vindication of the teachings of Hitler and Goebbels. It exposes the genuine democrats and internationalists among the Germans to cynical derision at the very time when they need the utmost moral authority.

The Germans have ample opportunity of comparing the moral precepts addressed to them with allied conduct. The allies came to Germany as schoolmasters. They purported to teach and correct a particularly vicious class of pupils. The schoolmaster is expected to be firm but free from the faults of which he wants to rid his pupils. The main principles which the allies purported to re-introduce into German life, in direct antithesis to the principles which they had purported to fight, were briefly the following: Firstly, political democracy, instead of political dictatorship and the leadership principle; secondly, the restoration of the rule of law as against the destruction of judicial independence and the domination of secret police; thirdly, the equality of races and religions, in opposition to the doctrine of master and slave races; fourthly, the principles of tolerance, humanity and international community, as against the doctrines of nationalism and intolerance; fifthly, ideals of peace instead of the worship of power and force; lastly, a social order in which there was no room for the dominant

<sup>2</sup> See above, p. 219 *et seq.*

partners of the Nazi regime, big business, the landed aristocracy and the militarists.<sup>2a</sup>

The pattern of political democracy has been largely restored. Freedom of opinion is increasingly real in the west. The safeguard against splinter parties and the prohibition of strongly nationalist parties is no more than a healthy self-preservation of democracy. In the Soviet zone the suppression of the Social Democratic Party makes for a largely different picture. This is underlined by a Law passed at the end of May by the parliament of Sachsen-Anhalt, to the effect that malicious or subversive comments on 'the State and democratic institutions' of the state is made a punishable offence.<sup>3</sup> As regards the rule of law, the restoration of a proper machinery of justice is only the first condition of the creation of an attitude of mind. Nazi laws have been abolished and the traditional system of Courts has been restored, but the decisive test is the extent to which the average citizen feels secure from arbitrary interference and confident in his appeal to the law when necessary. This is certainly not the case in the Soviet zone where sudden arrests and deportations are a regular occurrence. In the west, a general restoration of the rule of law is impeded by three factors: the continued detention, without trial, of large number of people arrested over two years ago on the 'collective guilt' principle; the endless prolongation of the denazification procedure, with its deep effect on individual liberties; the indiscriminate requisitioning of property for allied requirements. To this must be added, as a minor fourth factor, the continued lack of security of tenure of the judicial personnel which is a vital condition of judicial independence. Racial and religious discrimination has undoubtedly been abolished in the legal and official administration of Germany. But the attempt to teach respect for equality of human beings and rights has been largely frustrated by the principle sanctioned in Potsdam of the mass expulsion of 6,500,000 Germans. This implies the adoption both of a collective guilt standard and of the principles propagated by the Nazi regime

<sup>2a</sup> Among landowners, as among industrialists (cf. p. 243, below), there have been not a few who have advocated land reform and other far-reaching social reforms. Some of the noblest enemies and victims of the Nazi regime—von Moltke, von Trott, von Stauffenberg, Graf Schwerin-Schwanenberg—came from this class. But this hardly affects the general social analysis.

<sup>3</sup> See *The Times*, June 2nd, 1947.

itself. Germany has dealt worse with Jews, Poles, Russians. But no one can reasonably expect Germans to accept the protestations of a different philosophy of human values when every house and family has seen the spectacle of people in utter destitution, forcibly removed, with practically no notice, from the farms tilled by themselves and their ancestors for generations. This is a collective allied responsibility, for although Britain and America, at Moscow, entered a protest against the permanency of the Polish frontier in the west, no one could possibly have imagined that the sanctioning of the *de facto* annexation of this territory by the Poles, together with the expulsion of the resident German population and the removal of Poles from the east could be reversed by a subsequent decision.

All this makes it difficult for the average German to believe in the superiority of peace over force, of internationalism over nationalism. On the contrary, the latter is stimulated by the growing senselessness of de-industrialisation in a world clamouring for production and of excessive decentralisation where co-ordination is needed.

Here lies one of the greatest and most fundamental problems of allied government. The previous analysis has shown that, in the most vital fields of constitutional structure and of economic planning, the attempt is being made to enforce, in Germany, a pattern contrary to that developing almost anywhere else in the world. No responsible government anywhere could attempt to remove the essentials of economic planning and control in conditions of desperate scarcity. This is amply shown by the example of Great Britain. In Germany—and this is far more pronounced in the west than in the east—the opposite development has been forced upon Germany, for the sake of two principles: decentralisation of the German political structure and the weakening of powers of any authority such as the bi-zonal administrations which are not fully democratically controlled. In both cases a sound principle has been pushed too far. The decentralisation principle has led to the creation of dozens of new ministries and administrations, and the growth of vested interests in petty particularism. The temptation is for any Land to retain whatever surplus it has while clamouring to get supplies from elsewhere. In such fields as

education, police, administration of justice, forms of local government, decentralisation is a vital factor not only of the loosening up of the German state machinery, but also in the restoration of regional and local diversity and initiative. The danger is that loose thinking on the essentials of economic planning may discredit decentralisation altogether.<sup>3a</sup>

As regards the principles so far described, the allies had at least a certain community of objectives.

As regards the new social order there was not even the vestige of common purposes, beyond the purely negative 'denazification.'

The great social achievement of the Russian military government is that no one can deny boldness and 'bigness' in the changes introduced to the Soviet zone. The land reform was carried out with excessive haste, much individual injustice and to the at least temporary detriment of food production; but it has tackled a social problem which generations of German governments dared not touch.

As regards industrial and economic control, the Russian zone is far advanced in the socialisation of basic industries, farming and commerce, as well as in the shifting of economic control to a new class, composed of civil servants, technical managers, political leaders and representatives of the industrial working class. The most important industries have, however, been confiscated by the occupying power.

Some of the socialisation principles carried out in the Russian zone would be acceptable to non-Communist parties in the West, in particular to the Social Democrats. But the principle of indiscriminate expropriation without compensation is accepted by the Social Democrats only with considerable reservation and rejected by parties further to the right. Land reform is demanded by all parties, but not in the radical and ruthless manner in which it has been carried out in the East. Above all, the one-party pressure behind the socialisation in the Russian zone creates a gulf between East and West.

At the other end of the scale the Americans have enforced a measure of decentralisation and *laissez-faire* which may have been reasonable in America some 170 years ago and which may be acceptable in an economy of plenty, but collapsed even in the

<sup>3a</sup> See above, pp. 98, 99.

United States with the economic slump which brought Roosevelt and the New Deal. The adoption of this pattern for Germany has been a major disaster. It has far exceeded the bounds of reasonable regional autonomy and greatly impeded the economic recovery of Germany, which, since the roundabout turn of American policy in spring, 1946, has professedly been one of the main American objectives. But while many Germans looked to the United States as the land of political freedom, few expected from her a new social order.<sup>4</sup>

It is in the very same field in which no one expected a lead from America that the British failure is tragic. At an historic moment in the shaping of the future of Germany Britain elected a Labour Government, which was pledged to moderate socialisation on democratic lines. In Germany, and more particularly in the British zone, the application of a moderate but definite policy of socialisation is, however, far less a matter of conflicting political philosophies than in Britain. It is significant that such outstanding organs of public opinion as *The Times*, *The Manchester Guardian* and *The Economist*, all of them critical, although not hostile towards socialisation in Britain, have consistently advocated a policy of moderate socialisation in Germany, as a logical consequence of the dispossession of industrial owners, and as the only possible constructive solution.

Denazification policy imperatively demanded the encouragement and education in economic and managerial responsibility of the organised working classes, which had been suppressed by the Nazi regime, and which were the one large body of Germans with an old democratic and international tradition. The Landtag elections, held in the British zone on April 20, 1947, out of a total of about 8,600,000 votes gave over 4,500,000 to the Social Democrats, the Communist and the Centre Parties, all three of which are clearly pledged to a programme of socialisation of basic industries and public utilities, as well as to land reform and stronger participation of the working classes in economic management. In addition, a very considerable section of the Christian Democratic Party, which polled over 2,700,000 votes, pursues the same policy, although the

<sup>4</sup> See above, pp. 98, 99.

party also contains a reactionary wing which does not openly reject socialisation, but hedges behind the obscure and rather meaningless form of 'mixed public enterprise.' The approximate strength of the parties and their programmes had been known for a long time. If a fraction of the boldness displayed in upsetting a centuries-old tradition of German self-government had been displayed in the much more urgent and vital matter of social change, the direction should have been clear enough. Socialisation will no doubt come eventually, as the result of various decisions of the Land Parliaments. Britain can now no longer make direct decisions, as she is bound by the fusion with the American zone and the elaboration of a German democratic machinery. Whatever is decided on in the future cannot be ascribed to British leadership. The historic moment of making Britain the leader of the moderate left in Europe has passed.

The Labour Government has repeatedly expressed its desire to see the basic industries socialised and to give greater responsibility to the organised working class; but it was pre-occupied with its home affairs and other international problems. Meanwhile, the bulk of the senior personnel in the Control Commission, administrators, technicians and business men, have discouraged bold measures of social change. The social contacts of the large number of business men who became controllers of industries inclined towards their opposite numbers in German industry, often pre-war acquaintances. There has been co-operation with socialists whenever those happened to fill high office; but this did not mean much, as any socialists in office have constantly been told, first by the British and later by the bipartite authorities, that they must not meddle with politics; in other words, with socialisation. As a result, the most imaginative approach to the problem of production was missed: a frank and unequivocal declaration that the case for socialisation of basic industries was overwhelming, and a challenge to the miners and other key workers that they should prove it by increased production. At no time have they had more than hypothetical hints of possible socialisation.

The Germans have not failed to notice these trends. The left feels increasingly disillusioned and despondent. To the Communists —who have considerably increased their strength in the new Land

elections in Rhineland-Westphalia—Anglo-American policy is welcome food for propaganda. Far more serious is the dilemma of the Social Democrats, who look towards the west and towards parliamentary democracy, but who cannot and will not compromise again on basic principles, as they did under the Weimar Republic. Several times the socialists have been near to withdrawing all their ministers and senior officials because of their feeling of frustration. Nor is it a matter of politics only. The miners, despite all their pre-occupation with food, housing and other necessities, feel very strongly on the issue of socialisation, perhaps even more so than their British fellow miners.

It has already been shown how the discouragement of workers of the political parties of the left and of the trade unions has been accepted by a corresponding increase in self-confidence and arrogance among German big business.<sup>42a</sup> The British are not, like the Americans, definitely hostile to socialisation or other changes in the social structure; but at the critical moment they have failed to encourage it, and they are now increasingly dependent on American consent. It is not surprising, therefore, that in the eyes of the average German the bi-zonal fusion is regarded as the all but complete victory of American capitalism over British moderate socialism.

#### POSITIVE ACHIEVEMENTS

The burning question in everybody's mind is now how far failures and conflicts in Germany have produced a situation beyond hope. While the general picture is one of frustration, there are some positive factors.

Firstly, joint allied government is not altogether non-existent. In one limited field only, namely the government of Berlin, has it become executive, though, after a promising start, it now appears to be disintegrating. The disintegration of joint government in

<sup>42a</sup> The close association of German Industry and Finance with the development of German Imperialism, and the Nazi regime is a matter of history. But there have always been German industrial leaders—such as Robert Bosch or Abbe and Schomarus (Zeiss)—as enlightened and progressive as any. There are many employers to-day who are conscious of the need for far-reaching social changes. But their position is weakened, and that of the most dangerous—and traditionally dominant—element strengthened by the developments outlined in the text.

Berlin has, of course, been accentuated by the electoral victory of the Social Democrats, the arch-enemy of the Russian government.

More significant is the maintenance of a control machinery without which the gulf between the zones would have become even worse. The similarities and divergences in the different fields have been analysed in detail in the preceding chapters. Outstanding among positive achievements of joint control is the revival, throughout the four zones, though with greatly differing intensity and speed, of trade unions, works councils and co-operatives, the creation of Länder as a basis of a future federal Germany, and the re-creation of a pattern of political life based on democratic elections. At this point, however, one major and possibly fatal divergence becomes obvious: the outlawing in the Soviet zone of the Social Democratic Party means much more than the suppression of one party. It affects the whole pattern of political reconstruction. It leaves no middle way between the Communist and Russian inspired Socialist Unity Party and two parties of the middle which can never hope for a majority, though in the elections their strength was increased by the votes of Social Democrats. In the Western zones, on the other hand, the Social Democratic Party replaces the Communist Party as the predominant force of the left. While its social programme does not greatly differ from that of the Communists,<sup>5</sup> its international outlook and its attitude towards personal freedom and parliamentary democracy is fundamentally different. If the conflict between Soviet Russia and the Western zones deepens, the Social Democrats will be in a terrible dilemma, but in the last resort they will side with the Western powers rather than with Soviet Russia.<sup>6</sup> This deep-seated political difference reflects, of course, on many other institutions which are superficially similar in the different zones, such as trade unions, works councils, chambers of industry and commerce. It is, however,

<sup>5</sup> The main difference is that the Communists want direct State control and ownership, while the Social Democrats want to preserve a variety of decentralised forms of enterprise under public planning and direction.

<sup>6</sup> As so often in German politics, personal feuds accompany political differences. A typical illustration is a recent speech by Grotewohl, in which he speaks of Schumacher, the leader of the Social Democrats, as being affected by 'Rotlauf,' the name for a current disease among pigs, which also bears the interpretation of 'seeing red.' Grotewohl observes that this disease was only known among swine.

not too late to bridge this gulf. If the Russian Government should decide to admit the Social Democratic Party in its zone, as it has conceded in Berlin itself, the Western powers could waive their objection to the formation of a Socialist Unity Party in the West (which would, in effect, take the place of the Communists). This would remove the basic obstacle to a general political reconstruction of Germany on a parliamentary basis. But the experience of the government of Berlin shows that the Russians would hardly make such a concession, except under conditions which would destroy real equality and freedom of opinion. Without a parliamentary foundation any functional German administration at the centre would always live in a rarified atmosphere of isolation without a political foundation, a situation which has been found intolerable in the case of the bi-zonal authorities of the West.

The other major conflict which prevents the unity of military government is the reparations issue—that is, the question of how much the allies should get out of Germany and in what form this should be coupled with the future of Germany herself. This has been the openly acknowledged ground for the failure of the Moscow Conference. The issue can be stated in simple terms: the Russians, while reserving the right to deal with their zone as they like, want to weaken the West by making reparations from current production a first charge, and they want further dismantling as well. The British and Americans do not want to commit themselves to any further de-industrialisation before and unless Germany is economically re-united. They also want the repayment of British and American advances, instead of reparations to Russia, to be the first charge on current production.<sup>7</sup>

It will be shown in the concluding chapter that this conflict should not be insoluble.

These issues overshadow all other differences. Many divergences are developing, whether in the fields of local government, of school education, of university teaching, of social management, or of the control of industry. All these will become deep and lasting with the lapse of time and the growth of a new generation steeped in new ideas. As yet they are not unbridgeable.

<sup>7</sup> Cf. pp. 208 *sqq.*

## CHAPTER 15

### PROSPECTS

It is generally realised that the future of Allied Military Government in Germany, together with the wider aspects of inter-allied and international relations, is approaching a critical stage. The extent of political, economic and social division in Germany will be a symbol of the division of Europe and the world. The London Conference of foreign ministers, due to meet in London in Autumn, 1947, is therefore faced with a number of decisions whose significance reaches far beyond the problems of military government as such.

#### THE ISSUE OF GERMAN UNITY

First in importance is still the problem of German 'economic unity.' The term needs clarification. It has arisen from the original enumeration, in the Potsdam Agreement, of a number of functional economic agencies which in the allied intention should be central administrations for the whole of Germany. What is really implied in the implementation of this provision is the administrative and political unity of Germany. The experience both of the bi-zonal agencies in the west and the central administrations in the Soviet zone has shown that the functional central administrations must remain an ineffective superstructure, unless they lead to growing co-ordination and the gradual establishment of full government.

The attainment of this unity, though in stages, must still remain the first and paramount objective, for three reasons: (1) Effective security depends in the last resort on joint allied control which, in its turn, pre-supposes an integrated German administration, through which control can be exercised. (2) Administrative and political unity is the best guarantee of economic cohesion. The rejoining together of the truncated parts of Germany would be a vital and necessary contribution to the solution of the desperate economic problem of Germany—as much an allied as a German problem. Even after the separation of the vast agricultural territories east of

the Oder-Neisse line, and of the Saar in the west, the free and unhindered flow of economic life within the remainder of Germany, under a co-ordinated plan, would greatly reduce the need for separate support for the different parts. As has been shown above,<sup>1</sup> both the agricultural and the industrial systems of the eastern and western zones of Germany are complementary in structure and largely dependent on each other. It has also been shown that the opening up of a national outlet for the industrial production of the British zone is an urgent British interest. It would not only ease the burden of urgent imports but also lessen, for many years to come, the problem of competition for exports between British and German industries largely similar in structure. (3) Above all, the rejoining of Germany would be a vital step towards the rejoining of Europe while a definitely divided Germany means, without question, an equally divided Europe and, through the participation of non-European powers in the administration of Germany, the crystallisation of at least two antagonistic world blocs.

It is true that the development of Germany as by far the most powerful Continental state has upset the traditional balance of power in Europe—a balance which established itself only since France had ceased to occupy a position of equal predominance. But it is not the establishment of German political unity as such which has upset the European balance or turned a peaceful into a war-ridden continent. Before the establishment of German unity, Germany was the perpetual battlefield on which the other European powers fought their wars. The naïve thesis that the elimination of Germany's war potential would in itself be a guarantee of peace ever after has been too rudely shattered by the developments of the last few years to deserve even serious discussion. The task is, of course, to prevent Germany from becoming once again a military power of similar predominance. This danger is insignificant for many years to come. To-day, paradoxically, any military and political danger caused by Germany would have the opposite reason. It would not be the result of German unity but of the division of Germany into antagonistic spheres of influence and

<sup>1</sup> Pp. 189 *sqq.*

the direct or indirect re-armament of the different parts of Germany in the service of the opposing powers.

#### THE PROBLEM OF CENTRAL ADMINISTRATION

There will now be general though not universal agreement on the objective. The immediate problem before the allies is whether it is still capable of achievement. Of course, the first and paramount condition is that the four allies are sufficiently agreed on the vital significance of this problem to still desire the unity envisaged in the Potsdam Agreement. What are the practical problems ?

The allies at Moscow, in particular the British and Soviet representatives, agreed on the desirability of setting up functional central administrations, as a first step towards a form of federal government. The first question is to whom these agencies would be responsible. They would obviously be under joint allied control, but are they to be solely responsible to the allies or will they also have political responsibility to the German state or federation ? The Russians in the east, the British and Americans in the west, have experienced the impossibility of functional central administrations devoid of political responsibility. In both zones tentative steps have now been taken to create political foundations in the form of politically constituted 'Economic Councils.' The formation of central administrations solely responsible to military government would have been a natural and inevitable step two years ago. Now, after the creation of a vast and complex pattern of German political life, this would create a permanent tension between the political life and views pulsating in the Länder, and the functional agencies supposed to direct the economic life of Germany.

If there is to be any central administration solely responsible to military government, then it ought logically to be a technical non-political administration. One of the most unfortunate features of the original bi-zonal administration was the composition of the directing committee of political men who were forbidden to deal with political matters. But this would create a complete gulf between these administrations and the country. The overwhelming arguments are therefore in favour of a central administration with

a political and parliamentary basis. What kind of basis is it to be? The allied proposals at Moscow broadly agreed on the necessity for the creation of a federal parliament based on Land representation. The French alone suggested a rather weaker federal economic council, but the gap between their proposals and those of the other allies should not be unbridgeable. The federal council or parliament could easily be created from the existing economic councils in the combined British-U.S. zones and the Soviet zones respectively, that is, on the basis of party-political representation from the Länder in proportion to both population and party strength.

This leads to the next, and probably the most difficult, problem: the divergence of political structure between the eastern and western zones. There is little prospect of either allied or German agreement as long as the Social Democratic Party is outlawed in the east. It is not inconceivable that the federal council or parliament could work on the basis of the existing divergence of party structure, but it is unlikely. The Social Democrats would hardly be likely to recognise the Socialist Unity Party as the sole free and legitimate political organisation of the working class in the eastern zone.

If, in view of these difficulties, functional central administrations without a political basis should be created, as a first step, the staffing problem and the political struggle would be transferred to the allies. It is unlikely that the Russians would agree to the staffing of these administrations with nondescript and unpolitical civil servants; there would therefore be a struggle for the key posts. The conflict, in the Kommandatura, over the confirmation of the Lord Mayor of Berlin shows the immense difficulties in this field. One has only to think of the difference between, for example, the agricultural chief in the Soviet zone, the Communist Hoernle, and the conservative agricultural chief of the Bi-zonal Food Administrations, Sch lange-Schoningen, to realise the difficulties of agreement. They symbolise radical differences in social and political outlook which might be disguised but not eliminated by developing these administrations on non-political civil service lines.

Lastly, the problem of economic planning powers would arise

immediately. Even if the intention is to let the central administrations gradually develop into a full government, the first step will be the creation of functional economic administrations. Again, it has been shown throughout the book that hedging and muddled thinking on the vital issue of central economic planning powers has so far been one of the major causes of the plight in Germany. It has also been shown that in view of the creation of *Länder* throughout Germany—which is now a *fait accompli*—the only practicable solution would be one modelled upon the original solution in the British zone, that is the vesting of clear planning and directing powers in the central economic administration while the executive machinery and a considerable measure of regional delegation is left with the *Länder*.

To sum up, the creation of economic unity in Germany, in the political and administrative sense, comes up against four major problems: the question of political responsibility, the question of selection of personnel, the question of fundamental divergence between the party structures of the eastern and western zones, and the question of clear economic powers for the centre. Behind these concrete issues lie the deeper differences, on fundamentals of government, personal and political freedom, economic planning, the foundations of parliamentary democracy.

The Russians are likely to resist the admission of Social Democrats in their zone; the Americans are likely to resist any degree of real economic planning powers in the centre. A realistic assessment of the situation cannot but come to the conclusion that the formation of an effective central administration in the prevailing circumstances is not likely. One thing is certain: it would be far better not to attempt the formation of such administration rather than to expose it to persistent quadripartite and internal German conflicts. One cannot but shudder at the thought that the immense difficulties of the bi-zonal fusion—sponsored by two powers with a very large degree of community of purposes—might be transferred to the four-power level.

Perhaps a more hopeful approach would lie in an agreement between the four allies to leave the initiative to the Germans and to await German proposals for the form and functions of a central

administration. But the recent experience of the abortive Munich Conference (June, 1947) to which the five Prime Ministers from the Soviet zone came briefed with certain definite instructions and from which they withdrew immediately, is no good omen.

#### INTER-ZONAL ECONOMIC LINKS

In the likely event of a failure to achieve central administrations, is the necessary alternative the complete economic disintegration of Germany? As will be shown in the last section, the development of two or possibly three separate states in Germany is a likely development; but the economic realities would still point strongly to the preservation of the utmost economic links between these states. To-day, zone boundaries have reduced the flow of economic traffic between the zones to a trickle; but they are still linked by a customs and a currency union. As long as this is the case, the restoration of a healthy flow of economic relations is mainly dependent on allied military government. In the long run, a Customs and currency union is bound either to fail or to lead to stronger political links. But we are concerned with the vital next few years and the preservation of any existing chance for the re-integration of Europe, of which the re-integration of Germany is a vital part. If the allies cannot agree on a central administration, they could at least agree on giving greater liberty to the different German administrations in the restoration of economic relations. Some small start has been made at various inter-zonal economic conferences. It is the allies who have so far created the major obstacle, not the Germans. Behind it stands the continued divergence over reparations policy which has been dealt with in a preceding chapter. It has been suggested that the most promising compromise would be the reduction of dismantling in the west to a few definite war industries, coupled with the concession of the principle of reparations out of current production. Once basic agreement on reparations priorities were reached between the allies, the Germans would know where they are, and the restoration of economic links between the different parts would be likely to proceed quickly. It is essentially a restoration of former ties, such as the supply of spare parts from the Ruhr to the coal mines in Central Germany, of the exchange of dairy products against cereals and

seed potatoes. Once the formation of separate states is underlined by the creation of separate currencies, customs barriers will follow immediately, and economic relations will come to a virtual standstill. It is in every interest, allied, German and international, to delay that fateful day. There is also a world of difference between the difficulty of re-creating a German state out of the components and of driving a new wedge, through the creation of new currencies and Customs barriers.

#### A WESTERN STATE?

The feeling is now widespread that a failure of the London Conference to achieve political and administrative unity will lead to fully-fledged eastern and western states. The French zone (excluding the Saar), in that case, would presumably remain outside for a while, but eventually join the western state. Certainly, the present halfway house cannot continue much longer. Fully developed states are infinitely preferable to the twilight situation of to-day, which leads to the greatest political and administrative complications. It has been shown earlier in this book<sup>1</sup> that the present bi-zonal administration in the west is burdened with a complex structure of councils, committees, directors, etc. If this could be replaced by the well-proved scheme of a parliament, with an executive responsible to it, supplemented possibly by an advisory Economic Council, the problem would, at any rate, be reduced to well-known constitutional patterns of democracy and federal states, instead of the fantastic artificiality of the present scheme.

The next corollary to such a development must be the abandonment of the still surviving direct governmental functions of the allies. Any healthy development of a new western state is absolutely incompatible with the survival of allied approval for every single ordinance. The present twilight between the appearance of German executive responsibility and the reality of allied interference at almost every stage is the worst service the allies can render to democracy and responsible government in Germany. As long as the allies wish to govern Germany direct, they should do so clearly in the name of the sovereign power of military government. If they wish to stress the sovereignty of the people and to encourage

<sup>1</sup> See pp. 88 *sqq.*

democratic responsibility, they must give Germans the substance and not the shadow of responsibility. This links up with the problem of reducing allied control to the essential security functions. The means of doing so have been fully outlined in Chapter 12,<sup>2</sup> above. There is nothing more paralysing to a sense of political responsibility in Germany than the present situation which means that, on such vital problems as the future control of industry or land reform, the Germans will do an immense amount of preparatory work only to find themselves blocked by some allied veto or disagreement.

One of the inevitable conditions of making a German western state viable is a drastic revision of economic policy which has been discussed in Chapter 12. Without such revision, coupled with the limitation of security control to essential key points, no German government would have a hope of becoming effective. This applies no less to the field of social policy. This book has been emphatic on the failure of Great Britain to use a unique opportunity for imaginative socialisation in Germany at a time when the situation cried out for it. This opportunity no longer exists. Great Britain can now do little more than ensure that Germans are not prevented from implementing their freely expressed political will. Any conditions of an allied veto on socialisation proposals, except where they should be in clear conflict with vital security requirements, would be disastrous. There is at least a possibility that the Americans will carry their hostility to socialisation to the length of obstruction, under the pretext of alleged concentration of economic powers or some other reason. The obstruction of the socialisation of the I. G. Farben assets in Hessen, despite the clear will of the people, is an ominous precedent.<sup>3</sup> The least that Great Britain, in particular under a Labour Government, owes to herself and to her responsibilities in the British zone is an insistence on the fullest possible freedom for Germans to socialise if they wish. So far this has been the theory but not the practice of military government in the west.

If the allies wish to continue to lay down the principles of division of powers between centre and Länder, they should reconsider

<sup>2</sup> P. 219 *et seq.*

<sup>3</sup> Cf. also p. 146, above.

whether socialisation should really be a matter for the different Länder. It has been shown above<sup>1</sup> that, in view of the uneven structure of the different Länder, this would give an undue weight to a few Länder and hamper economic planning. Any division, on the other hand, between ownership and control would create a new host of administrative difficulties. It is another case of testing pre-conceived green table theories in the light of economic and administrative reality. A lack of balance between the different Länder is the greatest danger to healthy federalism which can be conceived.

#### THE INTERNATIONAL ASPECT OF THE GERMAN PROBLEM

If German political and administrative unity were achieved, joint allied control would in itself be a token of international government. In due course, Germany could join the United Nations Organisation and become again an effective member of the family of nations. If the disintegration is completed by the creation of western and eastern German states, the problem of the international position of Germany would have a different aspect. The present treatment of Germany, by a series of separate and unconnected experiments, is as bad in principle as it is disastrous in practice. It should be abundantly clear from the analysis, especially of the economic position but also of the mental state of Germany, that a western state which remains outside a wider international plan would be another stillborn child. Mr. Marshall's Harvard speech of June 5, 1947, clearly recognises the necessity of European economic integration as a condition of any international reconstruction. Whatever results may be achieved in the way of long-term credits, supplies of raw materials, multilateral trade agreements, customs reductions, they must include Germany. Nothing else will either ease the burden of supplies to Germany or solve the problem of the direction in which German industry should be revived in the service of the needs of other nations.

#### AN INTERNATIONAL AUTHORITY FOR THE RUHR ?

The French proposal was in the first place for a political separation of the Ruhr, and in the second place for the creation of an international public authority under allied control using the Ruhr industry

<sup>1</sup> pp. 144-145.

for international benefit. Mr. Bevin has repeatedly declared that he will not agree to any separate scheme for the Ruhr as long as the present zonal divisions remain. No British Government could act otherwise. The idea of superimposing on the present administration of the four zones another international authority covering the most vital part of one of these zones is a nightmare. The administrative complexities would dwarf even the present bi-zonal administration, while such a plan would leave the remainder of the British zone as an emasculated structure even less possible to maintain than the present ones.

The problem gains an entirely different aspect if Germany is definitely integrated into an international reconstruction plan. In that case, the planning of the production of the Ruhr area, as part of an international recovery plan, under international supervision, would be a constructive contribution. The French plan, which proposes the establishment of an international Ruhr authority, has the advantage of substituting the principle of full production for the present one of restriction and dismantling.

There are, however, very great practical difficulties in the way of establishing any international Ruhr authority on the lines of the Tennessee Valley Authority. Technically, it would be simpler if the area were detached altogether from the rest of Germany, not only economically and administratively, but politically too. In that case it would, in fact, become a separate state governed by an international authority, preferably the United Nations Organisation, through its Economic Council, and it might be the first example of direct international government, not only over resources but over territories and people. But the difficulties of a complete separation of the Ruhr area from Germany are obvious. It is likely to stimulate the national German loyalties of the population and it would, on the other hand, make the administration of the remainder of Germany, as a separate object of allied military government, even more difficult.

The idea, on the other hand, of an international Ruhr authority administering merely the economic assets of the Ruhr, without political separation from Germany, is one of those compromise

proposals which do not bear practical examination. Such an authority would have to be constituted as an international public corporation; but any such public corporations have hitherto been of a purely functional character, such as the Bank for International Settlements, U.N.R.R.A. or the International Monetary Fund. They are constituted by a number of participating governments and managed by an executive with international status. The Tennessee Valley Authority, on the other hand, raises no international problems. The constitution of a Ruhr authority as a purely economic international public corporation would raise great complexities of management, of distribution of functions between the German administration and the International Board, between the allies as the government of Germany and the allies as members of the International Board. Nor does the constitution of such an authority seem to be necessary for the purposes of putting the Ruhr industry into the service of international reconstruction. Surely the mere maintenance of international control over Germany, and the coupling of her industrial recovery with reparations and regulated exports to different countries implies in itself a full system of international control. It would only be necessary to enlarge existing organisation such as the European Coal Commission, which allocates exports of coal from the Ruhr, to develop an industrial reconstruction programme for the Ruhr and to put the administration of this programme under the supervision of the Economic Council of U.N.O. This would not create the vast political and administrative complications of a separate international authority.

Whether we are concerned with the future of the Ruhr or with the general problems of Germany's development, the key to the problem is always the same: no solution is possible until and unless the capacities and needs of Germany are treated as part of a wider international plan. This is a political as well as an economic and a psychological necessity. If the administration of Germany should provide the first example of constructive international government, that is only to be welcomed. It is only such an approach which can solve the problem of Germany's work for the benefit of international construction, the share of vital imports and credits to be given to her, or such more specific questions as the

adjustment between the British export drive and the recovery of the British zone of Germany.

Finally, no other approach can cure the German people mentally or prevent a dangerous revival of morbid and defiant nationalism. The Germans to-day need a big and inspiring idea to take the place of the shattered illusions of yesterday, and of the dismal and gray realities of to-day. All the present allied experiments of reconstruction, whether in the field of political democracy, of education, or restoration of justice, of federalisation, are in danger of getting lost because there is no coherent purpose which would make them appear to Germans as part of a new constructive idea.

On the contrary, the feeling that the numerous surgical experiments made on the body of the emaciated patient seem like demonstrations on a model rather than as vital operations, increases the sense of artificiality, isolation and resistance.

Any true regeneration of Germany must be based on the three interrelated ideas: of personal freedom, in a physical, spiritual and intellectual sense; of the primacy of international and humanitarian over national values and power worship; of a new social order, which is equally removed from the capitalist system of former days as from the enforced social solidarity of the Nazi system.

The various aspects of personal freedom have been discussed in connection with the restoration of political and administrative democracy, the restoration of law, education and freedom of worship. The missing link so far is the creation of a sense of real responsibility and initiative, which cannot possibly prosper under the present distribution of responsibilities.

The creation of a new social order is bound up with an imaginative and organic development of socialisation, in which the encouragement of initiative and active participation in the restoration of production by the workers, employees and consumers is at least as important as the legal forms of ownership and control.

The creation of a genuine internationalism is impossible, unless and until Germans are again active members of the international community. The world's desperate need for production, if coupled with Germany's responsibility to repair the damage done by her, presents a truly golden opportunity. It presupposes action in

three fields: the creation of conditions for increased production; the concentration of reparation plans on deliveries from current production; the clear distinction, in allied pronouncements and re-educational efforts, between the collective responsibility of the German nation—a sound and constructive principle—and the collective guilt of Germans—a bad and destructive principle.

#### BRIEF SUMMARY OF PRACTICAL PROBLEMS

The analysis attempted in this book may be briefly summed up in a series of interrelated practical decisions, as they will face the allies in their presumably last effort to achieve joint principles and action.

The first problem will be the achievement of 'economic unity,' which, as shown (p. 246 *et seq.*), really means political and administrative unity. For the reasons indicated, the attempt will almost certainly fail.

The consequence will be the consolidation, in more or less definite form, of an Eastern and a Western German state. It is to be hoped that neither the allied governments nor international public opinion will allow such a development to obscure the urgent second problem, namely, to revive to the utmost the economic relations between the two or three parts of Germany, which will still be linked by a customs and currency union (pp. 251 *sqq.*). The main task here is for the allies to allow the different German administrations and governments to come together, with fewer allied injunctions and restrictions.

Any real improvement in both inter-German and international German trade relations presupposes, however, thirdly, certainty on the level of industrial production, on reparations, and on the adjustment of German export efforts to that of other countries, notably of Great Britain. (Cf. pp. 204—219.)

The levelling up of German industry and trade is, fourthly, intimately linked with the problem of security against German aggression. It has been shown that the combination of the inescapable facts of Germany's present situation with the operation of some simple but effective key controls can provide the strongest possible guarantee. (Cf. pp. 219—222.)

The simplification of the control system is, in its turn, linked with two further vital problems: the drastic reduction of control personnel and machinery, which, for different reasons, is a pressing problem for both Britain and the United States, and a much further reaching and clearer delegation of responsibilities to the German authorities. It has been shown throughout the book (cf. in particular, pp. 88—95, 144—146, 159—160, 216—217) that the present lack of proportion between the number of German authorities and public bodies and their real responsibilities, is both costly and destructive for morale.

The problems and decisions mentioned so far mainly concern all four allied powers. Given the increasing separation between the Russian zone on one hand, and the Western zones on the other, some further problems concern the Western allies specifically.

If the final effort to create German unity fails, the consolidation of the present Western zones into a Western state will become urgent. It will mean the drastic simplification of the present fantastic structure of the bi-zonal fusion (cf. pp. 91—95) which is designed to encourage the worst features of German public life, namely petty factionalism and indulgence in empty rhetoric.

Much will depend on the future of the French zone. If France agrees to its inclusion in the Western state, the adjustment of Land boundaries between the U.S. and French zones (cf. pp. 73 *sqq.*) is less urgent than if the French zone remains outside. In the latter case, the preservation of the present divisions in Baden and Wurttemberg is almost certain to become a source of friction and of a fertile nationalist propaganda.

The main problem of the new Western state will be its economic development. It will be doomed to failure, unless it is squarely integrated in a wider international economic plan, based on the needs and resources of all the nations participating in it. Any differentiation made in regard to Germany must be confined to security considerations. Economic restrictionism as a principle must be abandoned. Germany's smaller neighbours have long seen it. Only France still resists, but with lessening conviction.

The constitutional pattern of the new Western state seems reasonably clear. It will be a federal pattern, of which the founda-

tions exist already (pp. 95—99). Here, a particularly important task awaits Great Britain, the only one of the three Western allies which, while accepting the federal principle, is not as rigidly committed to decentralisation as both France and the United States, and not handicapped by anti-planning prejudices, like the latter. The outline of a reasonable compromise between the minimum needs of economic planning and political decentralisation has been indicated (p. 99). No less important a British task is that of preventing any American anti-socialist prejudice from thwarting the political self-determination and initiative of the renascent German democracy in any field where allied security is not directly concerned.

The rejoining of the four parts of Germany still remains the first and most important objective, for the sake of Europe even more than of Germany. But the creation of Western and Eastern German states, as parts of wider associations, would be infinitely preferable to the present state of affairs, especially if every effort is made to preserve and strengthen contacts between east and west, through their German outposts.

One thing alone is certain: that a continuation of the present situation of Germany must lead to catastrophe.

## APPENDICES OFFICIAL DOCUMENTS

### 1. GENERAL

#### **The Potsdam Agreement**

##### REPORT OF THE TRIPARTITE CONFERENCE OF BERLIN GERMANY

The Allied armies are in occupation of the whole of Germany and the German people have begun to atone for the terrible crimes committed under the leadership of those whom, in the hour of their success, they openly approved and blindly obeyed.

Agreement has been reached at this Conference on the political and economic principles of a co-ordinated Allied policy towards defeated Germany during the period of Allied control.

The purpose of this agreement is to carry out the Crimea declaration on Germany. German militarism and Nazism will be extirpated and the Allies will take in agreement together, now and in the future, the other measures necessary to assure that Germany never again will threaten her neighbours or the peace of the world.

It is not the intention of the Allies to destroy or enslave the German people. It is the intention of the Allies that the German people be given the opportunity to prepare for the eventual reconstruction of their life on a democratic and peaceful basis. If their own efforts are steadily directed to this end, it will be possible for them in due course to take their place among the free and peaceful peoples of the world.

The text of the agreement is as follows:—

##### *The Political and Economic Principles to Govern the Treatment of Germany in the Initial Control Period*

###### *A. Political Principles*

1. In accordance with the Agreement on Control Machinery in Germany, supreme authority in Germany is exercised on instructions from their respective Governments, by the Commander-in-Chief of the armed forces of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics, and the French Republic, each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole, in their capacity as members of the Control Council.

2. So far as is practicable, there shall be uniformity of treatment of the German population throughout Germany.

3. The purposes of the occupation of Germany by which the Control Council shall be guided are:—

(i) The complete disarmament and demilitarisation of Germany and the elimination or control of all German industry that could be used for military production. To these ends:—

(a) All German land, naval and air forces, the SS, SA, SD and Gestapo, with all their organisations, staffs, and institutions, including the General Staff, the Officers' Corps, Reserve Corps, military schools, war veterans' organisations and all other military and quasi-military organisations, together with all clubs and associations which serve to keep alive the military tradition in Germany, shall be completely and finally abolished in such manner as permanently to prevent the revival or reorganisation of German militarism and Nazism.

(b) All arms, ammunition and implements of war and all specialised facilities for their production shall be held at the disposal of the Allies or destroyed. The maintenance and production of all aircraft and all arms, ammunition and implements of war shall be prevented.

(ii) To convince the German people that they have suffered a total military defeat and that they cannot escape responsibility for what they have brought upon themselves, since their own ruthless warfare and the fanatical Nazi resistance have destroyed German economy and made chaos and suffering inevitable.

(iii) To destroy the National Socialist Party and its affiliated and supervised organisations, to dissolve all Nazi institutions, to ensure that they are not revived in any form, and to prevent all Nazi and militarist activity or propaganda.

(iv) To prepare for the eventual reconstruction of German political life on a democratic basis and for eventual peaceful co-operation in international life by Germany.

4. All Nazi laws which provided the basis of the Hitler regime or established discrimination on grounds of race, creed, or political opinion shall be abolished. No such discriminations, whether legal, administrative or otherwise, shall be tolerated.

5. War Criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war

crimes shall be arrested and brought to judgment. Nazi leaders, influential Nazi supporters and high officials of Nazi organisations and institutions and any other persons dangerous to the occupation or its objectives shall be arrested and interned.

6. All members of the Nazi Party who have been more than nominal participants in its activities and all other persons hostile to Allied purposes shall be removed from public and semi-public office, and from positions of responsibility in important private undertakings. Such persons shall be replaced by persons who by their political and moral qualities, are deemed capable of assisting in developing genuine democratic institutions in Germany.

7. German education shall be so controlled as completely to eliminate Nazi and militarist doctrines and to make possible the successful development of democratic ideas.

8. The judicial system will be reorganised in accordance with the principles of democracy, of justice under law, and of equal rights for all citizens without distinction of race, nationality or religion.

9. The administration of affairs in Germany should be directed towards the decentralisation of the political structure and the development of local responsibility. To this end:—

- (i) Local self-government shall be restored throughout Germany on democratic principles, and in particular, through elective councils as rapidly as is consistent with military security and the purposes of military occupation.
- (ii) All democratic political parties with rights of assembly and of public discussion shall be allowed and encouraged throughout Germany.
- (iii) Representative and elective principles shall be introduced into regional, provincial and state (Land) administration as rapidly as may be justified by the successful application of these principles in local self-government.
- (iv) For the time being no central German Government shall be established. Notwithstanding this, however, certain essential central German administrative departments, headed by State Secretaries, shall be established, particularly in the fields of finance, transport, communications, foreign trade and industry. Such departments will act under the direction of the Control Council.

10. Subject to the necessity for maintaining military security, freedom of speech, press and religion shall be permitted, and religious

institutions shall be respected. Subject likewise to the maintenance of military security, the formation of free trade unions shall be permitted.

#### B. Economic Principles

11. In order to eliminate Germany's war potential, the production of arms, ammunition and implements of war as well as all types of aircraft and sea-going ships shall be prohibited and prevented. Production of metals, chemicals, machinery and other items that are directly necessary to a war economy shall be rigidly controlled and restricted to Germany's approved post-war peacetime needs to meet the objectives stated in paragraph 15. Productive capacity not needed for permitted production shall be removed in accordance with the Reparations Plan recommended by the Allied Commission on Reparations and approved by the Governments concerned or if not removed, shall be destroyed.

12. At the earliest practicable date, the German economy shall be decentralised for the purpose of eliminating the present excessive concentration of economic power as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements.

13. In organising the German economy, primary emphasis shall be given to the development of agriculture and peaceful domestic industries.

14. During the period of occupation Germany shall be treated as a single economic unit. To this end common policies shall be established in regard to:—

- (a) mining and industrial production and allocation;
- (b) agriculture, forestry and fishing;
- (c) wages, prices and rationing;
- (d) import and export programmes for Germany as a whole;
- (e) currency and banking, central taxation and customs;
- (f) reparation and removal of industrial war potential;
- (g) transportation and communications.

In applying these policies account shall be taken, where appropriate, of varying local conditions.

15. Allied controls shall be imposed upon the German economy but only to the extent necessary:—

- (a) To carry out programmes of industrial disarmament and demilitarisation, of reparations, and of approved exports and imports.
- (b) To assure the production and maintenance of goods and

services required to meet the needs of the occupying forces and displaced persons in Germany and essential to maintain in Germany average living standards not exceeding the average of standards of living of European countries. (European countries means all European countries excluding the United Kingdom and the Union of Soviet Socialist Republics.)

- (c) To ensure in the manner determined by the Control Council the equitable distribution of essential commodities between the several zones so as to produce a balanced economy throughout Germany and reduce the need for imports.
- (d) To control German industry and all economic and financial international transactions, including exports and imports, with the aim of preventing Germany from developing a war potential and of achieving the other objectives named herein.
- (e) To control all German public or private scientific bodies, research and experimental institutions, laboratories, etc., connected with economic activities.

16. In the imposition and maintenance of economic controls established by the Control Council, German administrative machinery shall be created and the German authorities shall be required to the fullest extent practicable to proclaim and assume administration of such controls. Thus it should be brought home to the German people that the responsibility for the administration of such controls and any breakdown in these controls will rest with themselves. Any German controls which may run counter to the objectives of occupation will be prohibited.

17. Measures shall be promptly taken:—

- (a) to effect essential repair of transport;
- (b) to enlarge coal production;
- (c) to maximise agricultural output; and
- (d) to effect emergency repair of housing and essential utilities.

18. Appropriate steps shall be taken by the Control Council to exercise control and the power of disposition over German-owned external assets not already under the control of United Nations which have taken part in the war against Germany.

19. Payment of reparations should leave enough resources to enable the German people to subsist without external assistance. In working out the economic balance of Germany the necessary means must be provided to pay for imports approved by the Control Council

in Germany. The proceeds of exports from current production and stock shall be available in the first place for payment for such imports.

The above clause will not apply to the equipment and products referred to in paragraphs 4(a) and 4(b) of the Reparations Agreement.

#### REPARATIONS FROM GERMANY

In accordance with the Crimea decision that Germany be compelled to compensate to the greatest possible extent for the loss and suffering that she has caused to the United Nations and for which the German people cannot escape responsibility, the following agreement on reparations was reached:—

1. Reparation claims of the USSR shall be met by removals from the zone of Germany occupied by the USSR and from appropriate German external assets.
2. The USSR undertakes to settle the reparation claims of Poland from its own share of reparations.
3. The reparation claims of the United States, the United Kingdom and other countries entitled to reparations shall be met from the Western Zones and from appropriate German external assets.
4. In addition to the reparations to be taken by the USSR from its own zone of occupation, the USSR shall receive additionally from the Western Zones:—
  - (a) 15 per cent of such usable and complete industrial capital equipment, in the first place from the metallurgical, chemical and machine manufacturing industries, as is unnecessary for the German peace economy and should be removed from the Western Zones of Germany, in exchange for an equivalent value of food, coal, potash, zinc, timber, clay products, petroleum products, and such other commodities as may be agreed upon.
  - (b) 10 per cent of such industrial capital equipment as is unnecessary for the German peace economy and should be removed from the Western Zones, to be transferred to the Soviet Government on reparations account without payment or exchange of any kind in return.
5. The amount of equipment to be removed from the Western Zones on account of reparations must be determined within six months from now at the latest.

Removals of equipment as provided in (a) and (b) above shall be made simultaneously.

6. Removals of industrial capital equipment shall begin as soon as possible and shall be completed within two years from the determination specified in paragraph 5. The delivery of products covered by 4(a) above shall begin as soon as possible and shall be made by the USSR in agreed instalments within five years of the date hereof. The determination of the amount and character of the industrial capital equipment unnecessary for the German peace economy and therefore available for reparations shall be made by the Control Council under policies fixed by the Allied Commission on Reparations, with the participation of France, subject to the final approval of the Zone Commander in the Zone from which the equipment is to be removed.

7. Prior to the fixing of the total amount of equipment subject to removal, advance deliveries shall be made in respect of such equipment as will be determined to be eligible for delivery in accordance with the procedure set forth in the last sentence of paragraph 6.

8. The Soviet Government renounces all claims in respect of reparations to shares of German enterprises which are located in the Western Zones of occupation in Germany as well as to German foreign assets in all countries except those specified in paragraph 9 below.

9. The Governments of the UK and USA renounce their claims in respect of reparations to shares of German enterprises which are located in the Eastern Zone of occupation in Germany, as well as to German foreign assets in Bulgaria, Finland, Hungary, Rumania and Eastern Austria.

10. The Soviet Government makes no claims to gold captured by the Allied troops in Germany.

#### DISPOSAL OF THE GERMAN NAVY AND MERCHANT MARINE

The Conference agreed in principle upon arrangements for the use and disposal of the surrendered German fleet and merchant ships. It was decided that the three Governments would appoint experts to work out together detailed plans to give effect to the agreed principles. A further joint statement will be published simultaneously by the three Governments in due course.

#### CITY OF KOENIGSBERG AND THE ADJACENT AREA

The Conference examined a proposal by the Soviet Government that pending the final determination of territorial questions at the peace settlement, the section of the western frontier of the Union of Soviet Socialist Republics which is adjacent to the Baltic Sea should pass from a point on the eastern shore of the Bay of Danzig to the east, north

of Braunsberg-Goldap, to the meeting point of the frontiers of Lithuania, the Polish Republic and East Prussia.

The Conference has agreed in principle to the proposal of the Soviet Government concerning the ultimate transfer to the Soviet Union of the City of Koenigsberg and the area adjacent to it as described above, subject to expert examination of the actual frontier.

The President of the United States and the British Prime Minister have declared that they will support the proposal of the Conference at the forthcoming peace settlement.

#### WAR CRIMINALS

The three Governments have taken note of the discussions which have been proceeding in recent weeks in London between British, United States, Soviet and French representatives with a view to reaching agreement on the methods of trial of those major war criminals whose crimes under the Moscow Declaration of October, 1943, have no particular geographic allocation. The three Governments reaffirm their intention to bring those criminals to swift and sure justice. They hope that the negotiations in London will result in speedy agreement being reached for this purpose, and they regard it as a matter of great importance that the trial of those major criminals should begin at the earliest possible date. The first list of defendants will be published before 1st September.

#### ORDERLY TRANSFERS OF GERMAN POPULATIONS

The Conference reached the following agreement on the removal of Germans from Poland, Czechoslovakia and Hungary:—

The three Governments, having considered the question in all its aspects, recognise that the transfer to Germany of German populations, or elements thereof remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner.

Since the influx of a large number of Germans into Germany would increase the burden already resting on the occupying authorities, they consider that the Allied Control Council in Germany should in the first instance examine the problem with special regard to the question of the equitable distribution of these Germans among the several zones of occupation. They are accordingly instructing their respective representatives on the Control Council to report to their Governments as soon as possible the extent to which such persons have already entered Germany from Poland,

Czechoslovakia and Hungary, and to submit an estimate of the time and rate at which further transfers could be carried out, having regard to the present situation in Germany.

The Czechoslovak Government, the Polish Provisional Government and the Control Council in Hungary are at the same time being informed of the above, and are being requested meanwhile to suspend further expulsions pending the examination by the Governments concerned of the report from their representatives on the Control Council.

Approved:—

J. V. STALIN

HARRY S. TRUMAN

C. R. ATTLEE

August 1945

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## Declaration

### REGARDING THE DEFEAT OF GERMANY AND THE ASSUMPTION OF SUPREME AUTHORITY WITH RESPECT TO GERMANY BY THE GOVERNMENTS OF THE UNITED KINGDOM, THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS AND THE PROVISIONAL GOVERNMENT OF THE FRENCH REPUBLIC.

The German armed forces on land, at sea and in the air have been completely defeated and have surrendered unconditionally and Germany, which bears responsibility for the war, is no longer capable of resisting the will of the victorious Powers. The unconditional surrender of Germany has thereby been effected, and Germany has become subject to such requirements as may now or hereafter be imposed upon her.

There is no central Government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country and compliance with the requirements of the victorious Powers.

It is in these circumstances necessary, without prejudice to any subsequent decisions that may be taken respecting Germany, to make provision for the cessation of any further hostilities on the part of the German armed forces, for the maintenance of order in Germany and for the administration of the country, and to announce the immediate requirements with which Germany must comply.

The Representatives of the Supreme Commands of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics and the French Republic, hereinafter called the "Allied Representatives," acting by authority of their respective Governments and in the interests of the United Nations, accordingly make the following Declaration:—

The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal, or local government or authority. The assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany.

The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory.

In virtue of the supreme authority and powers thus assumed by the four Governments, the Allied Representatives announce the following requirements arising from the complete defeat and unconditional surrender of Germany with which Germany must comply:—

#### ARTICLE I

Germany, and all German military, naval and air authorities and all forces under German control shall immediately cease hostilities in all theatres of war against the forces of the United Nations on land, at sea and in the air.

#### ARTICLE II

(a) All armed forces of Germany or under German control, wherever they may be situated, including land, air, anti-aircraft and naval forces, the S.S., S.A. and Gestapo, and all other forces or auxiliary organisations equipped with weapons shall be completely disarmed, handing over their weapons and equipment to local Allied Commanders or to officers designated by the Allied Representatives.

(b) The personnel of the formations and units of all the forces referred to in paragraph (a) above shall, at the discretion of the Commander-in-Chief of the Armed Forces of the Allied State concerned, be

declared to be prisoners of war, pending further decisions, and shall be subject to such conditions and directions as may be prescribed by the respective Allied Representatives.

(c) All forces referred to in paragraph (a) above, wherever they may be, will remain in their present positions pending instructions from the Allied Representatives.

(d) Evacuation by the said forces of all territories outside the frontiers of Germany as they existed on the 31st December, 1937, will proceed according to instructions to be given by the Allied Representatives.

(e) Detachments of civil police to be armed with small arms only, for the maintenance of order and for guard duties, will be designated by the Allied Representatives.

### ARTICLE III

(a) All aircraft of any kind or nationality in Germany or German-occupied or controlled territories or waters, military, naval or civil, other than aircraft in the service of the Allies, will remain on the ground, on the water or aboard ships pending further instructions.

(b) All German or German-controlled aircraft in or over territories or waters not occupied or controlled by Germany will proceed to Germany or to such other place or places as may be specified by the Allied Representatives.

### ARTICLE IV

(a) All German or German-controlled naval vessels, surface and submarine, auxiliary naval craft, and merchant and other shipping, wherever such vessels may be at the time of this Declaration, and all other merchant ships of whatever nationality in German ports, will remain in or proceed immediately to ports and bases as specified by the Allied Representatives. The crews of such vessels will remain on board pending further instructions.

(b) All ships and vessels of the United Nations, whether or not title has been transferred as the result of prize court or other proceedings, which are at the disposal of Germany or under German control at the time of this Declaration, will proceed at the dates and to the ports or bases specified by the Allied Representatives.

### ARTICLE V

(a) All or any of the following articles in the possession of the German armed forces or under German control or at German disposal

will be held intact and in good condition at the disposal of the Allied Representatives, for such purposes and at such times and places as they may prescribe:—

- (i) all arms, ammunition, explosives, military equipment, stores and supplies and other implements of war of all kinds and all other war material;
- (ii) all naval vessels of all classes, both surface and submarine, auxiliary naval craft and all merchant shipping, whether afloat, under repair or construction, built or building;
- (iii) all aircraft of all kinds, aviation and anti-aircraft equipment and devices;
- (iv) all transportation and communications facilities and equipment, by land, water or air;
- (v) all military installations and establishments, including airfields, seaplane bases, ports and naval bases, storage depots, permanent and temporary land and coast fortifications, fortresses and other fortified areas, together with plans and drawings of all such fortifications, installations and establishments;
- (vi) all factories, plants, shops, research institutions, laboratories, testing stations, technical data, patents, plans, drawings and inventions, designed or intended to produce or to facilitate the production or use of the articles, materials and facilities referred to in sub-paragraphs (i), (ii), (iii), (iv) and (v) above or otherwise to further the conduct of war.

(b) At the demand of the Allied Representatives the following will be furnished:—

- (i) the labour, services and plant required for the maintenance or operation of any of the six categories mentioned in paragraph (a) above; and
- (ii) any information or records that may be required by the Allied Representatives in connection with the same.

(c) At the demand of the Allied Representatives all facilities will be provided for the movement of Allied troops and agencies, their equipment and supplies, on the railways, roads and other land communications or by sea, river or air. All means of transportation will be maintained in good order and repair, and the labour, services and plant necessary therefor will be furnished.

## ARTICLE VI

(a) The German authorities will release to the Allied Representatives in accordance with the procedure to be laid down by them, all prisoners

of war at present in their power, belonging to the forces of the United Nations, and will furnish full lists of these persons, indicating the places of their detention in Germany or territory occupied by Germany. Pending the release of such prisoners of war, the German authorities and people will protect them in their persons and property and provide them with adequate food, clothing, shelter, medical attention and money in accordance with their rank or official position.

(b) The German authorities and people will in like manner provide for and release all other nationals of the United Nations who are confined, interned or otherwise under restraint, and all other persons who may be confined, interned or otherwise under restraint for political reasons or as a result of any Nazi action, law or regulation which discriminates on the ground of race, colour, creed or political belief.

(c) The German authorities will, at the demand of the Allied Representatives, hand over control of places of detention to such officers as may be designated for the purpose by the Allied Representatives.

#### ARTICLE VII

The German authorities concerned will furnish to the Allied Representatives:—

(a) full information regarding the forces referred to in Article 2 (a), and, in particular, will furnish forthwith all information which the Allied Representatives may require concerning the numbers, locations and dispositions of such forces, whether located inside or outside Germany;

(b) complete and detailed information concerning mines, minefields and other obstacles to movement by land, sea or air, and the safety lanes in connection therewith. All such safety lanes will be kept open and clearly marked; all mines, minefields and other dangerous obstacles will as far as possible be rendered safe, and all aids to navigation will be reinstated. Unarmed German military and civilian personnel with the necessary equipment will be made available and utilised for the above purposes and for the removal of mines, minefields and other obstacles as directed by the Allied Representatives.

#### ARTICLE VIII

There shall be no destruction, removal, concealment, transfer or scuttling of, or damage to, any military, naval, air, shipping, port, industrial and other like property and facilities and all records and

archives, wherever they may be situated, except as may be directed by the Allied Representatives.

#### ARTICLE IX

Pending the institution of control by the Allied Representatives over all means of communication, all radio and telecommunication installations and other forms of wire or wireless communications, whether ashore or afloat, under German control, will cease transmission except as directed by the Allied Representatives.

#### ARTICLE X

The forces, nationals, ships, aircraft, military equipment, and other property in Germany or in German control or service or at German disposal, of any other Country at war with any of the Allies, will be subject to the provisions of this Declaration and of any proclamations, orders, ordinances or instructions issued thereunder.

#### ARTICLE XI

(a) The principal Nazi leaders as specified by the Allied Representatives, and all persons from time to time named or designated by rank, office or employment by the Allied Representatives as being suspected of having committed, ordered or abetted war crimes or analogous offences, will be apprehended and surrendered to the Allied Representatives.

(b) The same will apply in the case of any national of any of the United Nations who is alleged to have committed an offence against his national law, and who may at any time be named or designated by rank, office or employment by the Allied Representatives.

(c) The German authorities and people will comply with any instructions given by the Allied Representatives for the apprehension and surrender of such persons.

#### ARTICLE XII

The Allied Representatives will station forces and civil agencies in any or all parts of Germany as they may determine.

#### ARTICLE XIII

(a) In the exercise of the supreme authority with respect to Germany assumed by the Government of the United Kingdom, the

United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, the four Allied Governments will take such steps, including the complete disarmament and demilitarisation of Germany, as they deem requisite for future peace and security.

(b) The Allied Representatives will impose on Germany additional political, administrative, economic, financial, military and other requirements arising from the complete defeat of Germany. The Allied Representatives, or persons or agencies duly designated to act on their authority, will issue proclamations, orders, ordinances and instructions for the purpose of laying down such additional requirements, and of giving effect to the other provisions of this Declaration. All German authorities and the German people shall carry out unconditionally the requirements of the Allied Representatives, and shall fully comply with all such proclamations, orders, ordinances and instructions.

#### ARTICLE XIV

This Declaration enters into force and effect at the date and hour set forth below. In the event of failure on the part of the German authorities or people promptly and completely to fulfil their obligations hereby or hereafter imposed, the Allied Representatives will take whatever action may be deemed by them to be appropriate under the circumstances.

#### ARTICLE XV

This Declaration is drawn up in the English, Russian, French and German languages. The English, Russian and French are the only authentic texts.

(*Date and years.*) 5 June 1945. (*Place.*) BERLIN.

18.00 hrs. (*Hours—Central European Time.*)

Signed by the Allied Representatives:

(*Name*) B. L. Montgomery      (*Title*) Field Marshal

(*Name*) D. Eisenhower      (*Title*) General

(*Name*) Zhukov      (*Title*) Marshal

(*Name*) de Lattre de Tassigny      (*Title*) General

## CONTROL COUNCIL

## Proclamation No. 1

## ESTABLISHING THE CONTROL COUNCIL

To the people of Germany:—

The Commanders-in-Chief of the Armed Forces in Germany of the United States of America, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the Provisional Government of the French Republic, acting jointly as members of the Control Council do hereby proclaim as follows:—

## I

As announced on 5th June, 1945, supreme authority with respect to Germany has been assumed by the Governments of the United States of America, the Union of Soviet Socialist Republics, the United Kingdom, and the Provisional Government of the French Republic.

## II

In virtue of the supreme authority and powers thus assumed by the four Governments the Control Council has been established and supreme authority in matters affecting Germany as a whole has been conferred upon the Control Council.

## III

Any military laws, proclamations, orders, ordinances, notices, regulations, and directives issued by or under the authority of the respective Commanders-in-Chief for their respective Zones of Occupation are continued in force in their respective Zones of Occupation.

Done at Berlin, 30th August, 1945.

Dwight D. Eisenhower, General of the Army  
B. H. Robertson, Lieutenant General  
L. Koeltz, Général de Corps d'Armée  
G. Zhukov, Marshal of the Soviet Union

MILITARY GOVERNMENT—GERMANY  
SUPREME COMMANDER'S AREA OF CONTROL

**Proclamation No. 1\***

To the people of

GERMANY

I, General Dwight D. Eisenhower, Supreme Commander, Allied Expeditionary Force, do hereby proclaim as follows:—

I

The Allied Forces serving under my command have now entered Germany. We come as conquerors, but not as oppressors. In the area of Germany occupied by the forces under my command, we shall obliterate Nazi-ism and German Militarism. We shall overthrow the Nazi rule, dissolve the Nazi Party and abolish the cruel, oppressive and discriminatory laws and institutions which the Party has created. We shall eradicate that German Militarism which has so often disrupted the peace of the world. Military and Party leaders, the Gestapo and others suspected of crimes and atrocities will be tried and, if guilty, punished as they deserve.

II

Supreme legislative, judicial and executive authority and powers within the occupied territory are vested in me as Supreme Commander of the Allied Forces and as Military Governor, and the Military Government is established to exercise these powers under my direction. All persons in the occupied territory will obey immediately and without question all the enactments and orders of the Military Government. Military Government Courts will be established for the punishment of offenders. Resistance to the Allied Forces will be ruthlessly stamped out. Other serious offences will be dealt with severely.

III

All German courts and educational institutions within the occupied territory are suspended. The Volksgerichtshof, the Sondergerichte, the SS Police Courts and other special courts are deprived of authority throughout the occupied territory. Re-opening of the criminal and civil courts and educational institutions will be authorized when conditions permit.

\* *Author's Note:* Issued before the end of the war, on the first occupation of German territory.

## IV

All officials are charged with the duty of remaining at their posts until further orders, and obeying and enforcing all orders or directions of Military Government or the Allied Authorities addressed to the German Government or the German people. This applies also to officials, employees and workers of all public undertakings and utilities and to all other persons engaged in essential work.

DWIGHT D. EISENHOWER,  
Supreme Commander,  
Allied Expeditionary Force.

## **2. CONSTITUTIONAL**

### **CONTROL COUNCIL**

#### **Law No. 46 (February 25, 1947)**

#### **ABOLITION OF THE STATE OF PRUSSIA**

The Prussian State which from early days has been a bearer of militarism and reaction in Germany has *de facto* ceased to exist.

Guided by the interests of preservation of peace and security of peoples and with the desire to assure further reconstruction of the political life of Germany on a democratic basis, the Control Council enacts as follows:—

#### **ARTICLE I**

The Prussian State, together with its central government and all its agencies, is abolished.

#### **ARTICLE II**

Territories which were a part of the Prussian State and which are at present under the supreme authority of the Control Council will receive the status of Laender or will be absorbed into Laender.

The provisions of this Article are subject to such revision and other provisions as may be agreed upon by the Allied Control Authority, or as may be laid down in the future Constitution of Germany.

#### **ARTICLE III**

The State and administrative functions as well as the assets and liabilities of the former Prussian State will be transferred to appropriate Laender, subject to such agreements as may be necessary and made by the Allied Control Authority.

#### **ARTICLE IV**

This law becomes effective on the day of its signature.

## Ordinance No. 57

### POWERS OF LÄNDER IN THE BRITISH ZONE

WHEREAS IT IS NECESSARY to define provisionally the powers of the Governments and Legislatures of the Länder within the British Zone of Occupation,

IT IS HEREBY ORDERED AS FOLLOWS:—

#### ARTICLE I

1. Subject to the legislative action of the Control Council and the provisions of this Ordinance, the Legislature of a Land shall have exclusive power to make laws for the Land or any part thereof.
2. Provided that the Legislature of a Land:—
  - (a) shall not make laws with respect to any of the subjects specified in Schedules A and B or, as an interim measure, with respect to any of the subjects specified in Schedule C to this Ordinance;
  - (b) shall, with respect to the subjects specified in Schedule D, implement fundamental principles which shall be laid down by or under the authority of Military Government.

#### ARTICLE II

3. The executive authority of a Land Government shall extend:—
  - (i) to all subjects with respect to which the Land Legislature has power to make laws;
  - (ii) to the administration of the subjects specified in the Schedules A, B, C and D to this Ordinance save as otherwise provided by Military Government;
  - (iii) to all matters with respect to which the Land Government is required to take action by Military Government.

#### ARTICLE III

4. When a Law has been passed by a Land Legislature it shall be presented to the Regional Commissioner, and the Regional Commissioner may, in his discretion, assent to the Law or withhold his assent therefrom. He may also return the Law to the Land Legislature for reconsideration and amendment.

5. No Law passed by a Land Legislature shall become effective until it has received the assent of the Regional Commissioner.

## ARTICLE IV

6. Nothing in this Ordinance shall be deemed to limit the power of the Military Governor to disallow any Land Legislation.

## ARTICLE V

7. This Ordinance shall become effective on the 1st December, 1946.

BY ORDER OF MILITARY GOVERNMENT.

## SCHEDULE A

## LIST OF SUBJECTS EXCLUDED FROM THE COMPETENCE OF LAND LEGISLATURES

1. Foreign affairs and Implementation of Treaties.
2. Defence.
3. Nationality and naturalisation.
4. External frontier control including immigration, emigration and quarantine; extradition.
5. Currency, coinage, note issue and legal tender.
6. Foreign exchange control.
7. National public debt and guarantees.
8. Central banking and the reserve requirements of other banks.
9. Posts and telegraphs; Post Office money order and cheque services; Post Office savings banks.
10. Shipping navigation and pilotage regulations; lighthouses, lightships, beacons, buoys and other provision for the safety of ships; regulations for the handling and storage of dangerous and perishable cargoes; regulations for the safety of port installations and equipment.
11. Inland waterways and inland water shipping and transport.
12. Railways.
13. Highway legislation relating to the use of highways and the provision of traffic direction and warning signs on highways, the licensing and registration of highway vehicles and drivers, the design, construction, use and speed of highway vehicles; international road services.
14. Copyright, patents and trademarks.
15. Foreign and inter-Land trade.
16. Negotiable instruments, bills of lading and other documents of title to goods.
17. Weights and measures.
18. Taxes on income and profits, on the transfer of property at death or by way of gift and on the movement of goods; customs.
19. Criminal Law and Procedure; Civil Law and Procedure, including Status; Constitution and Jurisdiction of Courts; Companies and Partnerships Commerical Law; Land Registration; Bankruptcy and Insolvency; Property Law, including Expropriation.

20. Direction of Basic industries and distribution of materials in critically short supply, as defined from time to time by Military Government.

#### SCHEDULE B

##### LIST OF SUBJECTS IN RESPECT OF WHICH EMERGENCY POWERS ARE EXERCISED BY MILITARY GOVERNMENT

1. War debts, occupation costs, reparations, restitution, demilitarisation, displaced persons.
2. Blocked property.
3. Price Formation and Price Control.
4. Wages and wages regulations.
5. Direction to work.
6. Establishment of priorities for labour supply.
7. Social Insurance including Unemployment Insurance.
8. Registration, placing and recruitment of labour; Trade Unions; Conciliation and Arbitration.
9. Timber felling and wood cutting.
10. Refugees.

#### SCHEDULE C

##### LIST OF SUBJECTS TEMPORARILY EXCLUDED FROM THE COMPETENCE OF LAND LEGISLATURES

1. Land Reform.
2. Taxes in the proceeds of which the Reich formerly participated.
3. Insurance.
4. Industrial Standardisation.
5. Collection, delivery, processing, distribution, rationing and import of foods.
6. Planning of food production; allocation of fertilisers, agricultural machines, seeds, insecticides and pesticides; establishment of necessary organisation for these purposes.

#### SCHEDULE D

##### LIST OF SUBJECTS WITH RESPECT TO WHICH THE IMPLEMENTATION OF FUNDAMENTAL PRINCIPLES LAID DOWN BY MILITARY GOVERNMENT IS INCUMBENT ON LAND LEGISLATURES

1. Ecclesiastical affairs.
2. Development and ownership of Industries.
3. Housing and Town Planning.
4. Food and Agriculture (subject to Schedule C items 5 and 6).
5. Construction and maintenance of highways of national importance.
6. Certain taxes specified by Military Government, the proceeds of which will accrue to the Länder.
7. Factory legislation.
8. Press, associations and meetings.

## Relationships between Military and Civil Government (U.S. Zone)

### SUBSEQUENT TO ADOPTION OF LAND CONSTITUTIONS

1. U.S. policy requires that the German people be permitted increasingly to govern themselves. The elections held in the U.S. Zone in 1946, and the constitutions which have been adopted are implementations of this policy. The subsequent operation of both Civil and Military Governments will be based upon this objective.

2. *Adoption of Land Constitutions Will Change Civil-Military Government Relations.*—The adoption of constitutions in the Laender of the U.S. Zone marks the beginning of a new period in the relationships between Military and Civil Government. All military and civil authorities must clearly understand those relationships.

3. *Specific Restrictions which will Continue to be Imposed upon Civil Governments.*—While self-government is the object of U.S. Military Government policy, it must nevertheless be understood that there are certain restrictions which will continue to apply to the actions of all levels of civil government in the U.S. Zone. The basic occupation policies announced from time to time, as in the case of the Berlin Protocol and Secretary of State Byrnes' Stuttgart speech, will, of course, continue to be enforced by Military Government. Furthermore, the specific restrictions set forth below must be considered as superior to the authority of any German governmental agency, and to both statutory and constitutional law. Those restrictions are:—

- (a) All international agreements regarding Germany which have been or may be concluded.
- (b) All present and future quadripartite policy decisions, laws and regulations.
- (c) All basic policy decisions of the U.S.-British Bipartite Board affecting the fields of central agencies.
- (d) The rights of an occupying power under international law to maintain an occupying force within the zone, to preserve peace and order, to reassume at any time full occupation powers in the event the purposes of the occupation are jeopardized.
- (e) The specific occupation purposes of the U.S. Government which, in addition to those set forth above, shall consist of the following basic tenets:—
  - (1) *Democracy.*—All levels of German government in the U.S. Zone must be democratic to the extent that:

- (a) All political power is recognized as originating with the people and subject to their control.
  - (b) Those who exercise political power are obliged to regularly renew their mandates by frequent references of their programmes and leadership to popular elections.
  - (c) Popular elections are conducted under competitive conditions in which not less than two effectively competing political parties submit their programmes and candidates for public review.
  - (d) Political parties must be democratic in character and must be recognized as voluntary associations of citizens clearly distinguished from, rather than identified with, the instrumentalities of government.
  - (e) The basic rights of the individual including free speech, freedom of religious preference, the rights of assembly, freedom of political association, and other equally basic rights of free men are recognized and guaranteed.
  - (f) Control over the instrumentalities of public opinion, such as the radio and press, must be diffused and kept free from governmental domination.
  - (g) The rule of law is recognized as the individual's greatest single protection against a capricious and wilful expression of governmental power.
- (2) German governmental systems must provide for a judiciary independent of the legislative and executive arms in general and of the police activity in particular. U.S. policy does not demand the rigid separation of legislative and executive powers. It has no objection to the cabinet or parliamentary type of government in which the executive and legislative branches are inter-dependent. Where a governmental system does provide for a separation of the executive and legislative, there must be no provision which would enable the executive to rule without the approval and consent of the legislative branch.
- (3) *Inter-governmental Distribution of Powers.*—German governmental structure shall be federal in character (Bundesstaat), and the constituent units thereof shall be States (Staaten not Laender). The functions of government shall be decentralized within that structure to the maximum degree consistent with the modern economic life. U.S. policy

concerning the relationships between levels of government requires that:—

- (a) All political power is recognized as originating with the people and subject to their control;
  - (b) Power shall be granted by the people primarily to the States (Staaten), and subsequently only in specifically enumerated and limited instances to a federal government.
  - (c) All other grants of governmental power by the people shall be made to the States.
  - (d) All powers not granted by the people shall be reserved to the people.
  - (e) A substantial number of functions shall be delegated by the States to the local governments. These should include all functions which may be effectively determined and administered by local governments.
  - (f) Governmental powers may not be delegated to private or quasi-public economic bodies.
  - (g) Pending the establishment of a federal government the popularly responsible governments and Landtage of the States shall act as the people's agents for the conferring of powers requiring central execution upon such transitional federal or central body or bodies as may be agreed upon by civil government and military government, or as may be directed by the latter.
- (4) *Economic Unity.*—Economic unity through the establishment of German central administrative agencies, particularly in trade, industry, food and agriculture, finance, transportation, and communications, is a controlling objective of our occupation. Pending quadripartite agreement for the establishment of such agencies, the U.S. Government offered to join with any one or two of the other occupying powers in the establishment of such administrative agencies to cover such zones as would accept. The administrative agencies now established for the British and U.S. Zones are an important step toward the economic unity agreed to by the occupying powers at Potsdam. Accordingly, the furtherance of their successful operations is a major policy of the U.S. occupation. When agreement is reached with either or both of the other powers for the establishment of German administrative

agencies covering the wider areas involved, the implementation of such agreements will constitute a part of the fundamental policy of the U.S. occupation.

- (f) All limitations upon governmental action which may be set out as specific qualifications to the approval of the State constitutions.
- (g) Such proclamations, laws, enactments, orders, and instructions of U.S. occupation authorities as continue in force or shall hereafter be promulgated.

4.—*Subsequent Functions of Military Government will be Limited to :*  
Subsequent to the adoption of these constitutions, Military Government will obtain its objective by means of:—

- (a) Observation, inspection, reporting and advising.
- (b) Disapproval of only such economic, social and political and governmental activity as it may find to clearly violate those objectives.
- (c) Removal of public officials whose public activities are in violation of those objectives.
- (d) The establishment of full Military Government controls in any area in the U.S. Zone where the objectives of the occupation as herein defined or provided for may be endangered.
- (e) Military Government courts.
- (f) Direct administration of such activities as demilitarization and reparations which cannot be assumed entirely by German civil governmental agencies but which are necessitated by international agreements, quadripartite action, or U.S. occupation policy.

5.—Subsequent directives will implement the foregoing statements insofar as modifications or revisions in Military Government practices may be required.

6.—The Land Directors of Military Government will advise the appropriate German officials of the content of this directive. It is desirable that the widest possible distribution to both civil and military authorities be given it. However, the directive will be considered a restricted document to be used for information of Military Government only until you are subsequently authorized to release it.

BY DIRECTION OF THE MILITARY GOVERNOR:

G. H. GARDE,

September 30, 1946.

*Lieutenant-Colonel, AGD  
Adjutant-General.*

# Draft Constitution for the German Democratic Republic

(Socialist Unity Party, Soviet Zone)

## EXCERPT \*

### ARTICLE 75

The republic legislates on the following matters:—

- (1) Relations with foreign countries, nationality, right of movement, immigration and emigration, extradition, matters concerning passports and foreigners.
- (2) Currency and minting, control of foreign currency, customs affairs, unity of customs and trade areas and freedom of commercial traffic, weights and measures, banking and exchange, private insurance.
- (3) Railways, motor transport on land, at sea, and in the air, land and water highways, shipping, deep sea and coastal fishing.
- (4) Post and telecommunications, broadcasting.
- (5) Agriculture, industry, crafts, trade, mining, commerce, and their position and representation in the national economy, public professional organisations, the law of associations and works councils.
- (6) Economic planning, production, manufacture, distribution and pricing of industrial goods, law of expropriation, socialisation of natural resources and of industrial enterprises, land reform, liquidation of monopolies and cartels.
- (7) Land law, settlements and homes, housing, distribution of population.
- (8) Civil law, industrial law, labour law, tax law, criminal law, legal procedure, including execution of sentences, protection of public order and safety.
- (9) Social insurance, social welfare, protection of labour, direction and exchange of labour.
- (10) Population policy, health, maternity, infant, child and youth welfare, welfare for the victims of fascism, the war injured, and the re-settlers.
- (11) Press, associations and meetings, legal position of theatres and cinemas.

\* Private translation from German.

(12) Schools, including universities and other academic institutions and libraries.

(13) Legal position of religious societies.

Insofar as the Republic does not make use of its legislative powers, the Länder retain the right to legislate.

#### ARTICLE 76

The Republic legislates on public finance (relations between Republic, Länder and Local Authorities, credit and budget principles). It must take into consideration the maintenance of the viability of the Länder and Gemeinden.

#### ARTICLE 77

Insofar as the Republic has made use of its legislative powers, contradictory regulations of the law of the Länder become invalid.

If there are divergencies of opinion on whether a provision of a law of a Land is compatible with the law of the Republic, the Presidential Council of Parliament decides the issue on application by the government of the Land or the government of the Republic.

#### ARTICLE 78

Bills are brought in by the government or from among the members of Parliament.

Each bill must have no less than two readings.

#### ARTICLE 79

The President of Parliament must promulgate bills which have been passed constitutionally and publish them within fourteen days in the Gazette of the Republic.

Unless otherwise stated, laws come into force on the day following their promulgation.

#### ARTICLE 80

The promulgation will be deferred for a month if a third of the members of Parliament so desire. At the end of this period the law will be promulgated unless a public demand has been made for a plebiscite against the passing of the law.

#### ARTICLE 81

A plebiscite (Volksentscheid) must be held if one-tenth of the people entitled to vote, or accredited parties or mass organisations which can

creditably claim to include one-fifth of all persons entitled to vote, file a petition to this effect (*Volksbegehren*).

The petition must be based on a draft bill, which must be submitted to Parliament by the government, with its comments.

The plebiscite will not take place if the desired bill is accepted by Parliament in a version to which the originators of the demand or their representatives agree.

No plebiscite will take place on the budget, revenue laws, and the rules governing public salaries and wages.

A bill subjected to a plebiscite is passed if the majority of voters have voted in its favour.

A special law will lay down the procedure for *Volksbegehren* and *Volkseutscheid*.

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## Bizonal Agencies

### REVISED AGREEMENT BETWEEN BRITISH AND U.S. GOVERNMENTS ON BIZONAL AGENCIES IN BRITISH AND U.S. ZONES.

(June 2, 1947)

Pending the creation of administrative and governmental institutions for Germany as a whole, and in order to facilitate the solution of pressing economic problems and the reconstruction of economic life by the popularly controlled German agencies operating under broad responsibilities, the Military Government of the British and the United States zones have agreed to a bizonal reorganization for the purpose only of a more complete economic integration under the following plan, which will be implemented by Military Government proclamation or Military Government ordinance published simultaneously in the two zones.

#### *General Principles*

1.—A body known as the Economic Council shall be selected by the Landtage of the various Länder.

2.—A full-time co-ordinating and executive body known as the Executive Committee shall be established subordinate to the Economic Council.

3.—The administration of the several bizonal departments shall be entrusted to executive directors responsible to the Economic Council

and under the immediate supervision of the Executive Committee, as defined below.

4.—Maximum responsibility for the conduct of bizonal functions shall be delegated by Military Government to German agencies with due regard to the principle of decentralization of administration.

5.—Decisions of the Economic Council and the Executive Committee shall be taken by majority vote.

#### *Organization and Functions*

Economic Council (A) Composition.—Representatives, numbering about 54, to be chosen:—

- (1) By the Landtage and if members thereof to resign.
- (2) One for each 750,000 population or part thereof if in excess of 375,000 but not less than one per Land.
- (3) In proportion to the division of political opinion in the Land, as shown by the popular vote in the most recent land-wide elections.

(B) Functions: (1) To direct the economic reconstruction of the two zones on the basis of a new plan for the agreed level of industry, subject to the approval of the Bipartite Board.

(2) To adopt and promulgate ordinances on the administration of railways, maritime ports and coastal shipping, inland water transport, inter-land inland waterways, and communications and postal services; to adopt and promulgate ordinances dealing with matters of general policy affecting more than one Land with respect to inter-land highways and highway transport, production, allocation and distribution of goods, raw production raw materials gas, water and electricity, foreign and internal trade; price formation and price control; production, importation, collection, allocation, and distribution of food; public finance, currency, credit banking and property control; and civil service management of bizonal department personnel, and such other functions as may from time to time be determined by the Bipartite Board. Such ordinances are subject to the approval of the Bipartite Board. The approval of the board to each ordinance shall be indicated by an endorsement stating that it has received such approval under the terms of the paragraph of the Military Government proclamation of Military Government ordinance which the council is given its powers. Except where these Economic Council ordinances with Bipartite Board approval specifically reserve to the Economic Council or delegate to the Executive Committee or Executive Directors the power to issue

implementing regulations pursuant to the ordinances, the Länder shall promptly implement the ordinances.

(3) To adopt and promulgate, subject to approval as set forth in paragraph (2) above, ordinances allocating to the Economic Council, the Executive Committee, and the Executive Directors the power to issue implementing regulations under specific existing legislation which is within the field referred to in paragraph (2) above.

(4) To delegate such of its powers as may be deemed appropriate to the Executive Committee, except for the power to adopt and promulgate ordinances set forth in paragraph (2) above and the power of appointment set forth in paragraph (5) below.

(5) To appoint, from nominations made by the Executive Committee and to remove, upon its own motion, the Executive Directors. To define the functions of the Executive Directors and their relations to the Economic Council, the Executive Committee and the Länder.

(6) To consider and pass the annual estimates of revenue and expenditure of the Council and its Departments.

#### *Executive Committee*

(A) Composition. One representative from each Land appointed by the Land Government who will serve on a full-time basis. Members of Executive Committee shall attend all meetings of the Economic Council as non-voting members.

(B) Functions. (1) To propose and make recommendations on ordinances for adoption by the Economic Council. (2) To issue implementing regulations within the scope of the authority delegated to the Executive Committee by the Economic Council. To co-ordinate and supervise the execution of ordinances and implementing regulations by the Executive Directors.

#### *Executive Directors*

(A) Selection. Each bizonal department will be headed by an executive director selected from nominations by the Executive Committee and appointed and removed by the Economic Council. The directors will operate under the immediate supervision of the Executive Committee but will have general responsibility to the Economic Council.

(B) Functions. (1) The executive directors, who will be considered as having status corresponding to that of State Secretary, will direct the operation of their respective departments in accordance with the ordinances and implementing measures of the Economic Council.

(2) The executive directors may issue implementing regulations in

accordance with the ordinances and implementing measures of the Economic Council.

(3) The executive directors shall be the chief accounting officers for their own departments and, subject to such instructions and such central financial controls as may be approved by the Economic Council, the financial and accounting operations of the agencies shall be under the general management and supervision.

#### *Decentralization of Administration*

In accordance with the principle of decentralization of administration maximum use will be made of the Land Governments in the performance of bizonal functions and in the issuance of appropriate orders and instructions carrying out the ordinances of the Economic Council as supplemented by the implementing regulations.

Except for those functions which are not under Land administration but which are under the direct administration of bizonal offices in accordance with approved ordinances of the Economic Council, the ordinances of the Economic Council, as supplemented by the implementing regulations, are binding upon the Länder and must be promptly executed by them.

#### *Transitional Provisions*

The abolition of the bizonal executive joint committees and the transfer of their functions in whole or in part to the Economic Council, Executive Committee, and Executive Directors will be effected by an ordinance adopted by the Economic Council and approved by the Bipartite Board. Until the effective date of this ordinance, the bizonal executive joint committees shall continue to function as before. During the interim period they shall exercise their present powers as supplemented by those set forth in the proposed ordinance relating to production, allocation, and distribution of goods and raw materials.

#### *Relationships of Bizonal Organizations to Military Government*

The German administrative organizations set forth above shall be controlled by joint Military Government agencies, which shall be given the following titles and functions:—

- (a) *Bipartite Board*.—(1) Consisting of the Military Governors or deputy Military Governors of C.C.G. (B.E.) and Omgus.  
(2) Will review and approve ordinances and decisions of the Economic Council; issue instructions to the Economic Council and the Executive Committee and exercise overall control of the operations of the entire administrative organization.

- (b) *Bipartite Control Office.*—(1) Consisting of one British and one United States chairman and the members of the several bipartite functional panels denoted below. (2) Will represent the Bipartite Board in the conduct of day to day administrative control of the Executive Committee and, through it, the Executive Directors. (3) Will maintain a joint secretariat and liaison staff as the channel of communication between Military Government and the Economic Council and its subordinate agencies.
- (c) *Bipartite Panels.*—(1) Consisting of United States and British representatives for each of the (grp. undec.) or subsequently created functions. (2) Will observe and review and, through the bipartite control office, exercise control of the operation of their respective departments.

**3. LEGAL**  
**CONTROL COUNCIL**  
**Proclamation No. 3**  
**FUNDAMENTAL PRINCIPLES OF JUDICIAL REFORM**

By the elimination of the Hitler tyranny by the Allied Powers the terrorist system of Nazi Courts has been liquidated. It is necessary to establish a new democratic judicial system based on the achievements of democracy, civilisation and justice. The Control Council therefore proclaims the following fundamental principles of judicial reform which shall be applied throughout Germany.

I .

EQUALITY BEFORE THE LAW

All persons are equal before the law. No person, whatever his race, nationality or religion, shall be deprived of his legal rights.

II

GUARANTEES OF THE RIGHTS OF THE ACCUSED

1. No person shall be deprived of life, liberty or property without due process of law.
2. Criminal responsibility shall be determined only for offences provided by law.
3. Determination by any court of any crime "by analogy" or by so called "sound popular instinct," as heretofore provided in the German Criminal Code, is prohibited.
4. In any criminal prosecution the accused shall have the rights recognised by democratic law, namely the right to a speedy and public trial and to be informed of the nature and cause of the accusation, the right to be confronted with witnesses against him and to have process for obtaining the witnesses in his favour and the right to have the assistance of counsel for his defence. Excessive or inhuman punishments or any not provided by law will not be inflicted.

5. Sentences on persons convicted under the Hitler Regime on political, racial or religious grounds must be quashed.

### III

#### LIQUIDATION OF EXTRAORDINARY HITLER COURTS

The People's Court, Courts of the N.S.D.A.P. and Special Courts are abolished and their re-establishment prohibited.

### IV

#### INDEPENDENCE OF THE JUDICIARY

1. Judges will be independent from executive control when exercising their functions and owe obedience only to the law.

2. Access to judicial functions will be open to all who accept democratic principles without account of their race, social origin or religion. The promotion of judges will be based solely on merit and legal qualifications.

### V

#### CONCLUDING CLAUSE

Justice will be administered in Germany in accordance with the principles of this proclamation by a system of Ordinary German Courts.

Done at Berlin, 20th October, 1945.

P. Koenig, Général de Corps d'Armée.

G. Zhukov, Marshal of the Soviet Union.

Dwight D. Eisenhower, General of the Army.

B. H. Robertson, Lieutenant General.

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#### CONTROL COUNCIL

#### Law No. 4

#### REORGANISATION OF THE GERMAN JUDICIAL SYSTEM

The Control Council, in accordance with its Proclamation to the German people, dated 20 October, 1945, deciding that the German judicial system must be reorganised on the basis of the principles of

democracy, legality and equality before the law of the citizens, without distinction of race, nationality or religion, enacts as follows:

### ARTICLE I

Reorganisation of the German Courts, will in principle, take place in conformity with the Law concerning the Structure of the Judiciary of 27 January, 1877, Edition of 22 March, 1924 (RGBI. 1/299). The following system of ordinary courts is to be re-established: Amtsgerichte, Landgerichte, and Oberlandesgerichte.

### ARTICLE II

The jurisdiction of Amtsgerichte and Landesgerichte in civil and criminal cases will in general be determined in conformity with the law in force on 30 January, 1933: however, the civil jurisdiction of the Amtsgerichte will be extended to claims of a value not exceeding RM. 2000.

The Landgerichte will have appellate jurisdiction over decisions of the Amtsgerichte.

The Oberlandesgerichte will have no original jurisdiction but will have final appellate jurisdiction over decisions of the Landgerichte in civil cases; they will have the right of review on question of law (Revision) over decisions of Amtsgerichte and Landgerichte in criminal cases as provided by law.

### ARTICLE III

Jurisdiction of German Courts shall extend to all cases both civil and criminal with the following exceptions:

- (a) Criminal offences committed against the Allied Occupation Forces;
- (b) Criminal offences committed by Nazis or any other persons against citizens of Allied nations and their property, as well as attempts directed towards the re-establishment of the Nazi regime, and the activity of the Nazi organisations;
- (c) Criminal offences involving military personnel of Allied Forces or citizens of Allied nations;
- (d) Other selected civil and criminal cases withdrawn from the jurisdiction of German Courts, as directed by the Allied Military Command;
- (e) When an offence committed is not of such a nature as to compromise the security of the Allied Forces, the Military Command may leave it to the jurisdiction of German Courts.

**ARTICLE IV**

To effect the reorganisation of the judicial system, all former members of the Nazi Party who have been more than nominal participants in its activities and all other persons who directly followed the punitive practices of the Hitler regime must be dismissed from appointments as judges and prosecutors and will not be admitted to these appointments.

**ARTICLE V**

In carrying out this law, it is left to the discretion of the Military Command gradually to bring the jurisdiction of German Courts into conformity with this law.

**ARTICLE VI**

This law will come into force from the date of its promulgation. The Military Commanders of Zones are charged with its execution.

Done at Berlin, 30 October, 1945.

Dwight D. Eisenhower, General of the Army.

P. Koenig, Général de Corps d'Armée.

G. Zhukov, Marshal of the Soviet Union.

B. L. Montgomery, Field Marshal.

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MILITARY GOVERNMENT—GERMANY  
SUPREME COMMANDER'S AREA OF CONTROL\*

**Law No. 1\*\*****ABROGATION OF NAZI LAW**

In order to eliminate from German law and administration within the occupied territory the policies and doctrines of the National Socialist Party, and to restore to the German people the rule of justice and equality before the law, it is hereby ordered:

**ARTICLE I**

1. The following fundamental Nazi laws enacted since 30 January 1933, together with all supplementary or subsidiary carrying out laws,

\* Laws, Ordinances, etc., issued for the SHAEF area are generally still valid in the British, American and French zones.

\*\* Author's Note: Law No. 1 and Ordinance No. 2 (p. 300, below) have been in force since the first occupation of German territory by the Allied Expeditionary Force.

decrees or regulations whatsoever are hereby deprived of effect within the occupied territory:

- (a) Law for Protection of National Symbols of 19 May 1933, RGBI 1/285.
- (b) Law against the creation of Political Parties of 14 July 1933, RGBI 1/479.
- (c) Law for securing the unity of Party and State of 1 December 1933, RGBI 1/1016.
- (d) Law concerning insidious attacks against the State and the Party, and for the Protection of Party Uniform of 20 December 1934, RGBI 1/1269.
- (e) Reich Flag Law of 15 September 1935, RGBI 1/1145.
- (f) Hitler Youth Law of 1 December 1936, RGBI 1/993.
- (g) Law for Protection of German Blood and Honour of 15 September 1935, RGBI 1/1146.
- (h) Decree of the Führer concerning the Legal Status of the NSDAP of 12 December 1942, RGBI 1/733.
- (j) Reich Citizenship Law of 15 September 1935, RGBI 1/1146.

2. Additional Nazi laws are and will be deprived of effect by Military Government for the purpose stated in the preamble.

## ARTICLE II

### GENERAL SUSPENDING CLAUSE

3. No German law, however or whenever enacted or enunciated, shall be applied judicially or administratively within the occupied territory in any instance where such application would cause injustice or inequality, either (a) by favouring any person because of his connection with the National Socialist Party, its formations or affiliated or supervised organizations, or (b) by discriminating against any person by reason of his race, nationality, religious beliefs or opposition to the National Socialist Party or its doctrines.

## ARTICLE III

### GENERAL INTERPRETATION CLAUSES

4. The interpretation and application of German law in accordance with National Socialist doctrines, however or whenever enunciated, are prohibited.

5. Decisions of German courts and official agencies and officials and legal writings supporting, expounding or applying National Socialist

objectives or doctrines shall not be referred to or followed as authority for the interpretation or application of German law.

6. German law which became effective after 30 January 1933 and is permitted to remain in force shall be interpreted and applied in accordance with the plain meaning of the text and without regard to objectives or meanings ascribed in preambles or other pronouncements.

## ARTICLE IV

### LIMITATIONS ON PUNISHMENT

7. No charge shall be preferred, no sentence imposed or punishment inflicted for an act, unless such act is expressly made punishable by law in force at the time of its commission. Punishment for offences determined by analogy or in accordance with the alleged "sound instincts of the people" (gesundes Volksempfinden) is prohibited.

8. No cruel or excessive punishment shall be inflicted and the death penalty is abolished except for acts punishable by death under law in force prior to 30 January 1933, or promulgated by or with the consent of Military Government.

9. The detention of any person not charged with a specific offence and the punishment of any person without lawful trial and conviction are prohibited.

10. All punishments imposed prior to the effective date of this law of a character prohibited by this law and not yet carried out, shall be modified to conform to this law or annulled.

## ARTICLE V

### PENALTIES

11. Violation of the provisions of this law shall, upon conviction by a Military Government Court, be punishable by any lawful punishment including, in the case of Article IV, the death penalty.

## ARTICLE VI

### EFFECTIVE DATE

12. This Law shall become effective upon the date of its first promulgation.

BY ORDER OF MILITARY GOVERNMENT.

MILITARY GOVERNMENT—GERMANY  
SUPREME COMMANDER'S AREA OF CONTROL

## Ordinance No. 2

### MILITARY GOVERNMENT COURTS\*

It being necessary to establish Military Courts for the trial of offence against the interests of the Allied Forces, it is ordered:

#### ARTICLE I

##### KINDS OF MILITARY COURTS

Military Government Courts in the occupied territory shall be:

- General Military Courts
- Intermediate Military Courts
- Summary Military Courts.

#### ARTICLE II

##### JURISDICTION

1. Military Government Courts shall have jurisdiction over all persons in the occupied territory except persons other than civilians who are subject to military, naval or air force law and are serving under the command of the Supreme Commander, Allied Expeditionary Force, or any other Commander of any forces of the United Nations.

2. Military Government Courts shall have jurisdiction over:
- (a) All offences against the laws and usages of war.
  - (b) All offences under any proclamation, law, ordinance, notice or order issued by or under the authority of the Military Government or of the Allied Forces.
  - (c) All offences under the laws of the occupied territory or of any part thereof.

#### ARTICLE III

##### POWERS OF SENTENCE

3. (a) A General Military Court may impose any lawful sentence including death.  
(b) An Intermediate Military Court may impose any lawful sentence except death, or imprisonment in excess of ten years, or fine in excess of £2,500—\$10,000.

\* *Author's Note:* In the British zone, Military Government Courts have been replaced by Control Commission Courts, as from January 1, 1947. Cf. p. 177, above.

- (c) A Summary Military Court may impose any lawful sentence except death, or imprisonment in excess of one year, or fine in excess of £250—\$1,000.
- (d) Within the limits of the powers given to the court, both a term of imprisonment and a fine may be imposed for the same offence, and a further term of imprisonment within the powers of the court may be imposed in default of payment of the fine.
- (e) In addition to or in lieu of sentence of fine, imprisonment or death (within its powers), a Military Government Court may make such orders with respect to the person of the accused and the property, premises or business involved in the offence as are appropriate and authorized by the Rules of Military Government Courts; and shall have power to impound money or other objects, to grant bail and accept and forfeit security therefor, to order arrest, to compel the attendance and order the detention of witnesses, to administer oaths, to punish for contempt, and such other powers as may be necessary and appropriate for the due administration of justice.

Where an offence is charged under the laws of the occupied territory or any part thereof, the punishment which may be imposed shall not be limited to the punishment provided by such laws.

## ARTICLE IV

### COMPOSITION OF COURTS

4. All members of the Military Government Courts shall be officers of the Allied Forces.

5. General Military Courts shall consist of not less than three members. Intermediate and Summary Military Courts shall consist of one or more members.

6. Advisors to sit with any court may be appointed either by the court itself or by an authority empowered to appoint such class of court. They shall give the court such advice and assistance as it may require but shall have no vote.

7. Clerks, interpreters, and other persons necessary for the conduct of proceedings may be appointed by the court.

## ARTICLE V

### RIGHTS OF ACCUSED

8. Every accused before a Military Government Court shall be entitled:

- (a) To have in advance of trial a copy of the charges upon which he is to be tried;

- (b) To be present at his trial, to give evidence and to examine or cross-examine any witness; but the court may proceed in the absence of the accused if the accused has applied for and been granted permission to be absent, or if the accused is believed to be a fugitive from justice;
- (c) To consult a lawyer before trial and to conduct his own defence or to be represented at the trial by a lawyer of his own choice, subject to the right of the court to debar any person from appearing before the court;
- (d) In any case in which a sentence of death may be imposed, to be represented by an officer of the Allied Forces, if he is not otherwise represented;
- (e) To bring with him to his trial such material witnesses in his defence as he may wish, or to have them summoned by the court at his request, if practicable;
- (f) To apply to the court for an adjournment where necessary to enable him to prepare his defence;
- (g) To have the proceedings translated, when he is otherwise unable to understand the language in which they are conducted;
- (h) In the event of conviction, within a time fixed by the Rules of Military Government Courts to file a petition setting forth grounds why the findings and sentence should be set aside or modified.

## ARTICLE VI

### REVIEW

9. The record of every case in which a petition for review is filed and of such other cases as shall be determined in accordance with the Rules of Military Government Courts shall be reviewed by such officer or officers as may be designated for that purpose by or under the authority of the Military Government.

10. The reviewing authority shall have power to set aside any finding of guilty, to suspend, reduce, commute or modify the sentence, to order a new trial, and to make such other orders as may be appropriate, but shall not set aside a finding of not guilty. The reviewing authority may increase the sentence in any case in which a petition of review has been filed which is considered to be frivolous, but shall not otherwise increase any sentence.

## ARTICLE VII

### CONFIRMATION OF DEATH SENTENCES

11. No sentence of death shall be executed unless and until confirmed in writing by the Supreme Commander, Allied Expeditionary Force, or

other head of the Military Government for the time being, or such other officer as he may designate. The confirming authority shall have with respect to such sentence all the powers of a reviewing authority.

## ARTICLE VIII

### RULES

12. Rules of Military Government Courts not inconsistent with this Ordinance prescribing the procedure of such courts and the mode of exercise of the powers conferred may be made, amended or supplemented by or under the authority of the Supreme Commander, Allied Expeditionary Force, or other head of the Military Government for the time being.

## ARTICLE IX

### EFFECTIVE DATE

13. This Ordinance shall become effective upon the date of the first promulgation.

BY ORDER OF MILITARY GOVERNMENT.

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## MILITARY GOVERNMENT—GERMANY SUPREME COMMANDER'S AREA OF CONTROL

### Law No. 52

AMENDED (1)\*

## BLOCKING AND CONTROL OF PROPERTY

### ARTICLE I

#### CATEGORIES OF PROPERTY

1. All property within the occupied territory owned or controlled, directly or indirectly, in whole or in part, by any of the following is hereby declared to be subject to seizure of possession or title, direction, management, supervision or otherwise being taken into control by Military Government:

- (a) The German Reich, or any of the Länder, Gaue, or Provinces, or other similar political sub-divisions, or any agency or

\*Amended 3 April 1945.

instrumentality thereof, including all utilities, undertakings, public corporations or monopolies under the control of any of the above;

- (b) Governments, nationals or residents of nations, other than Germany, which have been at war with any of the United Nations at any time since 1 September 1939, and governments, nationals or residents of territories which have been occupied since that date by such nations or by Germany;
- (c) The NSDAP, all offices, departments, agencies and organizations forming part of, attached to, or controlled by it; their officials and such of their leading members or supporters as may be specified by Military Government;
- (d) All persons while held under detention or any other type of custody by Military Government;
- (e) All organizations, clubs or other associations prohibited or dissolved by Military Government;
- (f) Owners absent from the Supreme Commander's Area of Control and Nationals and Governments of United Nations and Neutral Nations;
- (g) All other persons specified by Military Government by inclusion in lists or otherwise.

2. Property which has been the subject of duress, wrongful acts of confiscation, dispossession or spoliation from territories outside Germany, whether pursuant to legislation or by procedures purporting to follow forms of law or otherwise, is hereby declared to be equally subject to seizure of possession or title, direction, management, supervision or otherwise being taken into control by Military Government.

## ARTICLE II

### PROHIBITED TRANSACTIONS

3. Except as hereinafter provided, or when licensed or otherwise authorized or directed by Military Government, no person shall import, acquire or receive, deal in, sell, lease, transfer, export, hypothecate or otherwise dispose of, destroy or surrender possession, custody or control of any property:

- (a) Enumerated in Article I hereof;
- (b) Owned or controlled by any Kreis, municipality, or other similar political sub-division;
- (c) Owned or controlled by any institution dedicated to public worship, charity, education, the arts and sciences;

- (d) Which is a work of art or cultural material of value or importance, regardless of the ownership or control thereof.

### ARTICLE III

#### RESPONSIBILITIES FOR PROPERTY

4. All custodians, curators, officials, or other persons having possession, custody or control of property enumerated in Articles I or II hereof are required:

- (a) (i) To hold the same, subject to the directions of the Military Government, and pending such direction not to transfer, deliver or otherwise dispose of the same;
- (ii) To preserve, maintain and safeguard, and not to cause or permit any action which will impair the value or utility of such property;
- (iii) To maintain accurate records and accounts with respect thereto and the income thereof.
- (b) When and as directed by Military Government:
  - (i) To file reports furnishing such data as may be required with respect to such property and all receipts and expenditures received or made in connection therewith;
  - (ii) To transfer and deliver custody, possession or control of such property and all books, records and accounts relating thereto, and
  - (iii) To account for the property and all income and products thereof.

5. No person shall do, cause or permit to be done any act of commission or omission which results in damage to or concealment of any of the properties covered by this law.

### ARTICLE IV

#### OPERATION OF BUSINESS ENTERPRISES AND GOVERNMENT PROPERTY

6. Unless otherwise directed and subject to such further limitation as may be imposed by Military Government:

- (a) Any business enterprise subject to control under this law may engage in all transactions ordinarily incidental to the normal conduct of its business activities within occupied Germany provided that such business enterprise shall not engage in any transaction which, directly or indirectly, substantially

diminishes or imperils the assets of such enterprise or otherwise prejudicially affects its financial position and provided further that this does not authorize any transaction which is prohibited for any reason other than the issuance of this law;

- (b) Property described in Article I, 1 (a) shall be used for its normal purposes except as otherwise prohibited by Military Government.

## ARTICLE V

### VOID TRANSACTIONS

7. Any prohibited transaction effected without a duly issued licence or authorization from Military Government, and any transfer, contract or other arrangement made, whether before or after the effective date of this law, with intent to defeat or evade this law or the powers or objects of Military Government or the restitution of any property to its rightful owner, is null and void.

## ARTICLE VI

### CONFLICTING LAWS

8. In case of any inconsistency between this law or any order made under it and any German law the former prevail. All German laws, decrees and regulations providing for the seizure, confiscation or forced purchase of property enumerated in Articles I or II hereof, are hereby suspended.

## ARTICLE VII

### DEFINITIONS

9. For the purposes of this Law:

- (a) "Person" shall mean any natural person, collective person and any juristic person under public or private law, and any government including all political sub-divisions, public corporations, agencies and instrumentalities thereof;
- (b) "Business Enterprise" shall mean any person as above defined engaged in commercial, business or in public welfare activities;
- (c) "Property" shall mean all movable and immovable property and all rights and interests in or claims to such property whether present or future, and shall include, but shall not be limited to, land and buildings, money, stocks/shares, patent rights or licences thereunder, or other evidences of ownership,

and bonds, bank balances, claims, obligations and other evidences of indebtedness, and works of art and other cultural materials;

- (d) A "National" of a state or government shall mean a subject, citizen or partnership and any corporation or other juristic person existing under the laws of, or having a principal office in the territory of, such state or government;
- (e) "Germany" shall mean the area constituting "Das Deutsche Reich" as it existed on 31 December 1937.

## ARTICLE VIII

### PENALTIES

10. Any person violating any of the provisions of this law shall, upon conviction by a Military Government Court, be liable to any lawful punishment, including death, as the Court may determine.

## ARTICLE IX

### EFFECTIVE DATE

11. This Law shall become effective upon the date of its first promulgation.

BY ORDER OF MILITARY GOVERNMENT.

## **4. DENAZIFICATION**

CONTROL COUNCIL

### **Directive No. 24**

#### **REMOVAL FROM OFFICE AND FROM POSITIONS OF RESPONSIBILITY OF NAZIS AND OF PERSONS HOSTILE TO ALLIED PURPOSES**

The Control Council directs as follows:—

##### **1. OBJECT**

The Tripartite Conference of Berlin included among the purposes of the occupation of Germany: the removal from public and semi-public office and from positions of responsibility in important private undertakings of all members of the Nazi Party who have been more than nominal participants in its activities, and all other persons hostile to Allied purposes. Such persons shall be replaced by persons who, by their political and moral qualities, are deemed capable of assisting in developing genuine democratic institutions in Germany.

##### **2. DEFINITIONS**

- (a) Persons are to be treated as 'more than nominal participants in Party Activities' and as 'hostile to Allied purposes' when they have:—
  - (i) held office or otherwise been active at any level from local to national in the Party and its subordinate organizations or in organizations which further militaristic doctrines;
  - (ii) authorized or participated affirmatively in any Nazi crimes, racial persecutions or discriminations;
  - (iii) been avowed believers in Nazism or racial and militaristic creeds; or
  - (iv) voluntarily given substantial moral or material support or political assistance of any kind to the Nazi Party or Nazi officials and leaders.
- (b) The term 'public office' shall include all officials, civil servants or employees in governmental and municipal service, and members of governing bodies of political parties, trade unions

and other public organizations excepting employment of such minor importance that the incumbent or appointee is not placed in a position to endanger Allied interests or commit acts hostile to Allied principles and purposes by reason of his employment. The effect of this definition is to require as a minimum the investigation of all persons in public employment above that of ordinary labour. By ordinary labour is meant work or service, whether skilled, unskilled, or clerical, in an inferior position in which the worker does not act in any supervisory, managerial or organizing capacity whatsoever, or participate in hiring or discharging others, or in setting employment or other policies.

- (c) The term 'semi-public office' and 'positions of responsibility in important private undertakings' shall include policy-making or executive positions and personnel officers in:—
- (i) civic, economic and labour organizations;
  - (ii) corporations and other organizations in which the German Government, or its subdivisions had major financial interest;
  - (iii) important industrial, commercial, agricultural and financial institutions; and
  - (iv) the Press, publishing houses, and other agencies disseminating news and propaganda.

In the field of private and parochial education, the term shall include teachers as well as policy-making or executive officials in such institutions.

- (d) The terms 'important industrial, commercial, agricultural and financial institutions' shall include all such institutions directly supervised, utilized or controlled by Military Government and all industrial, mining, public utility, and commercial enterprises, combines and cartels which, by virtue of their capitalization, number of employees, type of products produced or services rendered, are important factors in the German economy or in the economy of the region or community in which they operate. It is most important to carry out the denazification of industry with the utmost vigour, and the smallness of the enterprise shall be no reason for failure to denazify.

In the discretion of occupational authorities, the removal and exclusion of Nazis and militarists from less important industrial, commercial, agricultural and financial establishments, business, retail shops, occupations, professional practices and licensed trades is authorized.

- (e) The term 'removal' as used herein shall mean to discharge the person forthwith and summarily and to terminate his influence and direct or indirect participation in the organization or concern with which he was associated. In the case of a profession or trade, the term 'removal' shall mean to disqualify and restrict the individual from practising the profession or trade in other than a private capacity in which he does not act in any supervisory, managerial, organizing capacity whatsoever or participates in hiring or discharging others or in setting employment or other policies.
- (f) The names of persons removed and the reasons for their removal will be passed at the appropriate level to Property Control Officers (or corresponding Military Government authorities), who will take action in accordance with pertinent Military Government laws and orders, to effect the immediate blocking and control of their property.

Persons removed from public office will not be entitled to the benefit of any pension or other civil service rights.

### 3. SCOPE

The term 'removal' in the passage of the Potsdam Declaration here quoted is to be understood to include 'exclusion.'

The standards to be applied and instructions for action are, therefore, to be considered to refer to the exclusion of Nazis and, of other persons hostile to Allied purposes from office and from positions of responsibility no less than to their removal from such office and positions.

### 4. RESPONSIBILITY

The removal and exclusion of Nazis and of other persons hostile to Allied purposes is the general responsibility of the Division or Branch employing the persons concerned or considering them for employment, acting on the advice and with the assistance of Public Safety. The view of Public Safety, recorded after consultation with C.I., shall be decisive and shall override considerations of administrative expediency, convenience or even necessity.

### 5. REVIEW OF CASES

If it is felt that a mistake has been made in the application of this directive by the removal or exclusion from office of a particular individual review of his case may be requested by the Branch or Division concerned, and the latter may submit the case for further consideration to

Military Government, acting in consultation with Public Safety and C.I., at Zonal H.Q.; in the case of Greater Berlin Area, to the Kommandatura, and in the case of the staffs and employees of Central Agencies, to the Control Council.

When there is positive evidence, supported by investigation, that an individual is not more than a nominal Nazi and is not a militarist and is not hostile to the Allied Cause, he may be retained in office in spite of the mandatory clauses contained in this directive.

#### 6. DISCRETIONARY REMOVAL AND EXCLUSION

Between those whose removal and exclusion from office and positions of responsibility is laid down as compulsory in paragraph 10 below and those who have not participated at all in any Nazi activity, there is a mass of Germans, the extent and quality of whose association and participation, as well as their past and present motives, are in doubt and require careful investigation.

Discretion to employ such people or to leave them in occupation of their office or position of importance is left to Divisions and Branches acting under the advice of Public Safety, to be recorded after consultation with C.I. The retention of persons in discretionary categories shall be based only on the non-availability of other suitable personnel and will continue only until other suitable personnel will become available. Points for guidance in assessing the respective reliability of such discretionary cases are given in paragraph 11 below.

#### 7. FURTHER REVIEW OF CASES RETAINED OR NEWLY APPOINTED

All retentions of Germans in office or in positions of importance, as well as new appointments, shall be regarded as provisional only and subject to future review.

This particularly applies to discretionary cases retained in employment. These shall be subject to further scrutiny once the original vetting of serving officials and candidates for new employment have been completed, both in the light of such new records as may have become available and of the individual's attitude and conduct since his retention or appointment.

Even officials whom Military Government may have newly appointed because their freedom from Nazi-ideology or hostility to the Nazi regime has been established cannot therefore be regarded as necessarily in sympathy with a continued Allied occupation or its purpose.

Responsibility for such further inquiry rests upon all Divisions and Branches as well as upon Public Safety and C.I.

8. (a) The terms of this directive are subject to immediate implementation so far as any Central German Administration is concerned.
- (b) In the Zones, in view of the urgent necessity for producing rapidly and in maximum quantities such commodities as food, fuel and building material which are required, not only for German economy, but also for that of other European countries, Zone commanders may postpone the immediate removal of an individual providing:—
  - (i) the temporary retention of the individual is, in the opinion of the Zone Commander, essential; and
  - (ii) that the individual was not an important member of the Nazi Party and played no more than a nominal part in its activities and is not hostile to the Allied purposes; and that
  - (iii) the individual is removed as soon as practicable.
- (c) Individuals retained under sub-paragraph (b) above will only be so retained for their specialist knowledge. In no case will an individual be retained who has been appointed to the position he holds purely for political (Nazi Party) reasons.

9. Persons removed from public and semi-public office, or from the governing bodies of political parties, trade unions and other public organizations, or from positions of responsibility in important private undertakings as defined in the provisions of paragraph 2 of this directive, pursuant to the policies enumerated in this directive, will not be employed in any other Zone of Occupation in any such positions as defined in the provisions of paragraph 2 of this directive, except in cases of revisions requested under paragraph 5 above.

General and statistical information on de-Nazification in the various zones shall be presented to the Control Council semi-annually, the first report to cover the period to 1st July, 1946. These reports shall be submitted within 30 days following semi-annual periods.

#### 10. COMPULSORY REMOVAL AND EXCLUSION CATEGORIES

This covers the following main categories\*:—(1) War Criminals; (2) Nazi Organizations (43 groups); (3) Recipients of Nazi Honours (8 groups); (4) Senior Civil Servants (22 groups); (5) Senior Business Officials and Executives (7 groups); (6) Certain Military Personnel (2 groups); (7) Organizations in Occupied Territory (3 groups); (8) Lawyers and other high-ranking officials of Nazi Institutions (13 groups).

\*Footnote: Author's condensation from the full list of 99 categories (with numerous sub-divisions).

**GUIDE TO DISCRETIONARY REMOVALS OR EXCLUSIONS**

11. The eradication of Nazism and Militarism will require the elimination and exclusion from any positions of control or influence of persons likely to perpetuate an undemocratic tradition. In addition to the persons coming within categories listed in paragraph 10 and therefore subject to compulsory removal, the following types should be closely examined:—

- (a) Career officers of the German Armed Forces, including the former Reichswehr.
- (b) Persons who represent Prussian Junker tradition. These persons are difficult to define correctly. Information as to any individual, however, which shows him to have been a member of an aristocratic Prussian or East Prussian, Pomeranian, Silesian or Mecklenburg family, or of one which is the owner of extensive property in Prussia or that he was a member of any of the elite German University Students Corps (such as the Renaer Berussen or all corps belonging to the Kesoner S.O.), or a member of any of the East Prussian or Silesian Landesmannschaften, should be given careful consideration; such individuals are likely to merit removal or exclusion as they are likely to perpetuate the German militaristic tradition.

**12. DISCRETIONARY REMOVAL AND EXCLUSION CATEGORIES**

The list given hereunder should be consulted in determining whether or not persons not included under paragraph 10 above or otherwise prescribed fall within the category of strong Nazi sympathisers or persons hostile to Allied purposes. The list enumerates 22 groups.

**13. PRINCIPLES GUIDING DISCRETION IN REMOVING AND EXCLUDING INDIVIDUALS**

The guiding principle in all these cases must be whether the person under examination has or has not been more than a nominal participant in the activities of the Nazi Party, in the light of the definition in paragraph 2 of this directive. In cases of doubt persons will not be employed or left in occupation of their office if others are available who are politically more reliable but administratively somewhat less suitable. Such persons will, wherever possible, be given only posts of minor responsibility until they have proved themselves to be politically reliable. It is essential that the head executive German officials at the levels of Provinz, Regierungsbezirk and Kreis should be confirmed

anti-Nazis even if this entails the employment of persons less well qualified to discharge their administrative duties.

Done in Berlin on 12 January, 1946.

B. H. ROBERTSON, Lieutenant-General.

L. KOELTZ, General d'Armée.

V. D. SOKOLOVSKY, Army General.

Oliver P. Echols, Major-General,  
for LUCIUS D. CLAY, Lieutenant-General, U.S. Army..

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#### CONTROL COUNCIL

### Directive No. 38

#### THE ARREST AND PUNISHMENT OF WAR CRIMINALS, NAZIS AND MILITARISTS AND THE INTERNMENT, CONTROL AND SURVEILLANCE OF POTENTIALLY DANGEROUS GERMANS.

The Control Council directs as follows:—

#### PART I

##### 1. OBJECT

The object of this paper is to establish a common policy for Germany covering:

- (a) The punishment of war criminals, Nazis, Militarists, and industrialists who encouraged and supported the Nazi Regime.
- (b) The complete and lasting destruction of Nazism and Militarism by imprisoning and restricting the activities of important participants or adherents to these creeds.
- (c) The internment of Germans, who, though not guilty of specific crimes are considered to be dangerous to Allied purposes, and the control and surveillance of others considered potentially so dangerous.

##### 2. REFERENCES

- (a) *Potsdam Agreement, Sec. III, Para. 3, I (a)*
- (b) *Potsdam Agreement, Sec. III, Para. 3, III*
- (c) *Potsdam Agreement, Sec. III, Para. 5*

- (d) *Control Council Directive No. 24*
- (e) *Control Council Law No. 10, Article II, Para. 3 and Article III, Paras. 1 and 2.*

### 3. THE PROBLEM AND GENERAL PRINCIPLES

It is considered that in order to carry out the principles established at Potsdam, it will be necessary to classify war criminals and potentially dangerous persons into five main categories and to establish punishments and sanctions appropriate to each category.

We consider that the composition of categories and the nature of penalties and sanctions should be agreed in some detail but without limiting in any way the full discretion conferred by Control Council Law No. 10 upon Zone Commanders.

4. A clear definition of Allied policy with regard to the obviously dangerous as well as to only potentially dangerous Germans is required at this time in order to establish uniform provisions for disposing of these persons in the various Zones.

### 5. CATEGORIES AND SANCTIONS

Composition of categories and sanctions are treated in detail in Part II of this Directive. They shall be applied in accordance with the following general principles:

- (a) A distinction should be made between imprisonment of war criminals and similar offenders for criminal conduct and internment of potentially dangerous persons who may be confined because their freedom would constitute a danger to the Allied Cause.
- (b) Zone Commanders may, if they so desire, place an individual in a lower category on probation, with the exception of those who have been convicted as major offenders on account of their guilt in specific crimes.
- (c) Within the categories, Zone Commanders will retain discretion to vary the sanctions if necessary to meet the requirements of individual cases within the limits laid down in this Directive.
- (d) The classification of all offenders and potentially dangerous persons, assessment of sanctions and the review of cases will be carried out by agencies to be designated by the Zone Commanders as responsible for the implementation of this directive.
- (e) The Zone Commanders and tribunals will have the authority to up-grade or down-grade individuals between categories. Zone

- Commanders may, if they wish, use German tribunals for the purpose of classification, trial and review.
- (f) In order to prevent persons dealt with under this Directive avoiding any of the consequences of the Directive by moving to another Zone, each Zone Commander will ensure that the other Zones know and understand the methods employed by him in endorsing the identity documents of classified individuals.
  - (g) To implement this Directive, it is recommended that each Zone Commander will issue Orders or Zonal Laws conforming in substance to the provisions and principles of this Directive in his own Zone. Zone Commanders will supply each other with copies of such Laws or Orders.
  - (h) Provided that such Zonal Laws are in general conformity with the principles here set forth, full discretion is reserved to the individual Zone Commanders as regards their application in detail in accordance with the local situation in their respective Zones.
  - (i) In Berlin the Allied Kommandatura will have the responsibility for implementing the principles and provisions of this Directive and will issue such regulations and orders as are required for that purpose. Whatever discretion in the implementation of this Directive is left to Zone Commanders will be exercised by the Allied Kommandatura in Berlin.
  - (j) Apart from the categories and sanctions set forth in Part II of this Directive, persons who committed war crimes or crimes against peace or humanity as defined in Control Council Law No. 10, will be dealt with under the provisions and procedures prescribed by that Law.

## PART II

### ARTICLE 1

#### GROUPS OF PERSONS RESPONSIBLE

In order to make a just determination of responsibility and to provide for imposition (Except in the case of 5 below) of sanctions the following groupings of persons shall be made.

1. Major offenders.
2. Offenders (activists, militarists, and profiteers).
3. Lesser offenders (probationers).
4. Followers.

5. Persons exonerated. (Those included in the above categories who can prove themselves not guilty before a tribunal.)

## ARTICLE 2

### MAJOR OFFENDERS

Major Offenders are:

1. Anyone who, out of political motives, committed crimes against victims or opponents of national socialism.
2. Anyone who, in Germany or in the occupied areas, treated foreign civilians or prisoners of war contrary to International Law.
3. Anyone who is responsible for outrages, pillaging, deportations, or other acts of brutality, even if committed in fighting against resistance movements.
4. Anyone who was active in a leading position in the NSDAP, one of its formations or affiliated organizations, or in any other national socialistic or militaristic organization.
5. Anyone who, in the government of the Reich, the Laender, or in the administration of formerly occupied areas, held a leading position which could have been held only by a leading national socialist or a leading supporter of the national socialistic tyranny.
6. Anyone who gave major political, economic, propagandist or other support to the national socialistic tyranny, or who, by reason of his relations with the national socialistic tyranny, received very substantial profits for himself or others.
7. Anyone who was actively engaged for the national socialistic tyranny in the Gestapo, the SD, the SS or the Geheime Feld- or Grenzpolizei.
8. Anyone who in any form whatever, participated in killings, tortures, or other cruelties in a concentration camp, a labour camp, or a medical institution or asylum.
9. Anyone who, for personal profit or advantage, actively collaborated with the Gestapo, SD, SS or similar organisations by denouncing or otherwise aiding in the persecution of the opponents of the national socialistic tyranny.
10. Any member of the High Command of the German Armed Forces so specified.
11. In Part I of Appendix "A" a list of categories of persons is given who, because of the character of the crimes allegedly committed by them, shown in paras. 1—10 of this Article, as well as the positions

occupied by them, will be carefully investigated and, if the results of the investigation necessitate a trial, must be brought to trial as major offenders and punished if found guilty.

## ARTICLE 3

### OFFENDERS

#### A. ACTIVISTS

##### I. An activist is:

1. Anyone who, by way of his position or activity, substantially advanced the national socialistic tyranny.
2. Anyone who exploited his position, his influence or his connections to impose force and utter threats, to act with brutality and to carry out oppressions or otherwise unjust measures.
3. Anyone who manifested himself as an avowed adherent of the national socialistic tyranny, more particularly of its racial creeds.

##### II. Activists are in particular the following persons, insofar as they are not major offenders:

1. Anyone who substantially contributed to the establishment, consolidation or maintenance of the national socialist tyranny, by word or deed, especially publicly through speeches or writings or through voluntary donations out of his own or another's property or through using his personal reputation or his position of power in political, economic or cultural life.
2. Anyone who, through national socialistic teachings or education, poisoned the spirit and soul of the youth.
3. Anyone who, in order to strengthen the national socialistic tyranny, undermined family and marital life disregarding recognised moral principles.
4. Anyone who in the service of national socialism unlawfully interfered in the administration of justice or abused politically his office as judge or public prosecutor.
5. Anyone who in the service of national socialism agitated with incitement or violence against churches, religious communities or ideological associations.
6. Anyone who in the service of national socialism ridiculed, damaged or destroyed values of art or science.
7. Anyone who took a leading or active part in destroying trade unions, suppressing labour, and misappropriating trade union property.

8. Anyone who, as a provocateur, agent or informer, caused or attempted to cause, institution of a proceeding to the detriment of others because of their race, religion or political opposition to national socialism or because of violation of national socialist rules.

9. Anyone who exploited his position or power under the national socialistic tyranny to commit offences, in particular, extortions, embezzlements and frauds.

10. Anyone who by word or deed took an attitude of hatred towards opponents of the NSDAP in Germany or abroad, towards prisoners of war, the population of formerly occupied territories, foreign civilian workers, prisoners or like persons.

11. Anyone who favoured transfer to service at the front because of opposition to national socialism.

**III. An activist shall also be anyone who, after 8 May, 1945, has endangered or is likely to endanger the peace of the German people or of the world, through advocating national socialism or militarism or inventing or disseminating malicious rumours.**

#### **B. MILITARISTS**

##### **I. A Militarist is:**

1. Anyone who sought to bring the life of the German people into line with a policy of militaristic force.

2. Anyone who advocated or is responsible for the domination of foreign peoples, their exploitation or displacement, or

3. Any who, for these purposes, promoted armament.

##### **II. Militarists are in particular the following persons, insofar as they are not major offenders:**

1. Anyone who, by word or deed, established or disseminated militaristic doctrines or programs or was active in any organisation (except the Wehrmacht) serving the advancement of militaristic ideas.

2. Anyone who before 1935 organized or participated in the organization of the systematic training of youth for war;

3. Anyone who, exercising the power of command, is responsible for the wanton devastation, after the invasion of Germany, of cities and country places;

4. Anyone without regard to his rank who as a member of the Armed Forces (Wehrmacht), the Reich Labor Service (Reichsarbeitsdienst), the Organization Todt (OT), or Transport Group Speer, abused

his official authority to obtain personal advantages or brutally to mistreat subordinates.

5. Anyone whose past training and activities in the General Staff Corps, or otherwise has in the opinion of Zone Commanders contributed towards the promotion of militarism and who the Zone Commanders consider likely to endanger Allied purposes.

#### C. PROFITEERS

##### I. A profiteer is:

Anyone who, by use of his political position or connections, gained personal or economic advantages for himself or others from the national socialist tyranny, the rearmament, or the war.

##### II. Profiteers are in particular the following persons, insofar as they are not major offenders:

1. Anyone who, solely on account of his membership in the NSDAP, obtained an office or a position or was preferentially promoted therein.

2. Anyone who received substantial donations from the NSDAP or its formations or affiliated organizations.

3. Anyone who obtained or strove for advantages for himself or others at the expense of those who were persecuted on political, religious or racial grounds, directly or indirectly, especially in connection with appropriations, forced sales, or similar transactions.

4. Anyone who made disproportionately high profits in armament or war transactions.

5. Anyone who unjustly enriched himself in connection with the administration of formerly occupied territories.

D. In Part II of Appendix "A" a list of categories of persons is given who, because of the character of the crimes allegedly committed by them, shown in this Article, paragraphs A, B and C, will be carefully investigated and, if the results of the investigation necessitate a trial, must be brought to trial as offenders and punished if found guilty.

### ARTICLE 4

#### LESSER OFFENDERS PROBATIONERS

##### I. A lesser offender is:

1. Anyone including former members of the Armed Forces who otherwise belongs to the groups of offenders but because of special

circumstances seems worthy of a milder judgement and can be expected according to his character to fulfil his duties as a citizen of a peaceful democratic state after he has proved himself in a period of probation.

2. Anyone who otherwise belongs to the group of followers but because of his conduct and in view of his character will first have to prove himself.

II. A lesser offender is more particularly:

1. Anyone who, born after the first day of January 1919, does not belong to the group of major offenders, but seems be an offender, without however having manifested despicable or brutal conduct and who can be expected in view of his character to prove himself.

2. Anyone, not a major offender, who seems to be an offender but withdrew from national socialism and its methods, unqualifiedly and manifestly, at an early time.

3. In Part III of Appendix "A" a list of categories of persons is given who will be carefully investigated and, if there is evidence of guilt in accordance with provisions of paras I and II of this Article, will be charged as lesser offenders and punished if found guilty.

## ARTICLE 5

### FOLLOWERS

I. A follower is:

Anyone who was not more than a nominal participant in, or a supporter of, the national socialistic tyranny.

II. Subject to this standard, a follower is more particularly:

1. Anyone who as a member of the NSDAP or of one of its formations, except the HJ and BDM, did no more than pay membership fees, participate in meetings where attendance was obligatory, or carry out unimportant or purely routine duties such as were directed for all members.

2. Anyone, not a major offender, an offender, or a lesser offender, who was a candidate for membership in the NSDAP but had not yet been finally accepted as a member.

3. Anyone being a former member of the Armed Forces who, in the opinion of the Zone Commander, is liable by his qualification to endanger Allied purposes.

## ARTICLE 6

### EXONERATED PERSONS

An exonerated person is:

Anyone who, in spite of his formal membership or candidacy or any other outward indication, not only showed a passive attitude but also actively resisted the national socialistic tyranny to the extent of his powers and thereby suffered disadvantages.

## ARTICLE 7

### SANCTIONS

In accordance with the extent of responsibility the sanctions set forth in Article 8—11 shall be imposed in just selection and gradation, to accomplish the exclusion of national socialism and militarism from the life of the German people and reparation of the damage caused.

## ARTICLE 8

### SANCTIONS AGAINST MAJOR OFFENDERS

I. Major Offenders having committed a specific war crime will be liable to the following sanctions:

- (a) Death.
- (b) Imprisonment for life or for a period of five to fifteen years, with or without hard labour.
- (c) In addition, any of the sanctions listed in Paragraph II of this Article may be imposed.

II. The following sanctions may be imposed upon other Major Offenders:

- (a) They shall be imprisoned, or interned for a period not exceeding 10 years. Internment after 8 May 1945 can be taken into account. Disabled persons will be required to perform special work in accordance with their capability.
- (b) Their property may be confiscated. However, there shall be left to them an amount necessary to cover the bare existence after taking into consideration family conditions and earning power.
- (c) They shall be ineligible to hold any public office, including that of notary or attorney.
- (d) They shall lose any legal claims to a pension or allowance payable from public funds.

- (e) They shall lose the right to vote, the capacity to be elected and the right to be politically active in any way or to be members of a political party.
- (f) They shall not be allowed to be members of a trade union or a business or vocational association.
- (g) They shall be prohibited for a period of not less than ten years after their release—
  - (i) To be active in a profession or, independently, in an enterprise of economic undertaking of any kind, to own a share therein or to supervise or control it.
  - (ii) To be employed in any dependent position, other than ordinary labour.
  - (iii) To be active as teacher, preacher, editor, author, or radio commentator.
- (h) They are subject to restrictions as regards living space and place of residence, and may be enlisted for public works service.
- (i) They shall lose all licences, concessions and privileges granted them and the right to keep a motor vehicle.

## ARTICLE 9

### SANCTIONS AGAINST OFFENDERS

- 1. They may be imprisoned or interned for a period up to ten years in order to perform reparation and reconstruction work. Political internment after 8 May 1945 can be taken into account.
- 2. Their property may be confiscated (as a contribution for reparation), either as a whole or in part. In case the property is confiscated in part, capital goods (Sachwerte) should be preferred. The necessary items for daily use shall be left to them.
- 3. They shall be ineligible to hold any public office, including that of notary or attorney.
- 4. They shall lose any legal claims to a pension or allowance payable from public funds.
- 5. They shall lose the right to vote, the capacity to be elected, and the right to be politically active in any way or to be members of a political party.
- 6. They shall not be allowed to be members of a trade union or business or vocational association.

7. They shall be prohibited, for a period of not less than five years after their release:

- (a) To be active in a profession or, independently, in an enterprise or economic undertaking of any kind, to own a share therein or to supervise or control it.
- (b) To be employed in any dependent position, other than ordinary labour.
- (c) To be active as a teacher, preacher, editor, author, or radio commentator.

8. They are subject to restriction as regards living space and place of residence.

9. They shall lose all licences, concessions and privileges granted them and the right to keep a motor vehicle.

10. Within the discretion of Zone Commanders sanctions may be included in zonal laws forbidding offenders to leave a Zone without permission.

## ARTICLE 10

### SANCTIONS AGAINST LESSER OFFENDERS

If the finding of the tribunal places an individual in the category of lesser offenders, he may be placed on probation. The time of probation shall be at least two years but, as a rule, not more than three years. To which group a person responsible hereunder will be finally allocated will depend on his conduct during the period of probation. While on probation, the following sanctions will apply:

1. They shall be prohibited, during the period of probation:—

- (a) To operate an enterprise as owner, partner, manager or executive supervisor or control an enterprise or to acquire any enterprise in whole or in part, or any interest or share therein, in whole or in part.
- (b) To be active as teacher, preacher, author, editor or radio commentator.

2. In the event the lesser offender is the owner of an independent enterprise, or any share therein, at the time of his classification, his interest in such enterprise may be blocked.

3. The term enterprise as used in paragraph 1 (a) and 2 of this article need not include small undertakings of craftsmen, retail shops, farms and like undertakings, having less than 20 employees.

4. Property values, acquisition of which rested upon use of political connections or special national socialistic measures such as aryanization and armament shall be confiscated.

5. For the period of probation additional sanctions, taken from these set forth in Article 11 hereof may be imposed, with just selection and modification, more particularly:

(a) Restrictions in the exercise of an independent profession, and prohibition to train apprentices.

(b) In respect of civil servants: reduction of retirement pay, retirement or transfer to an office with lesser rank or to another position with reduction of compensation, rescission of promotion, transfer from the civil service relationship into that of a contractual employee.

6. Internment in a labour camp or confiscation of the whole property may not be ordered.

7. Within the discretion of Zone Commanders sanctions may be included in zonal laws forbidding the lesser offenders to leave a Zone without permission.

8. Within the discretion of Zone Commanders sanctions may be included in zonal laws denying them the capacity to be elected and the right to be politically active in any way or to be members of a political party. They may also be denied the right to vote.

9. They may be required to report periodically to the police in the place of their residence.

#### RESTRICTED

#### ARTICLE 11

##### SANCTIONS AGAINST FOLLOWERS

The following sanctions against followers may be applied at the discretion of the Zone Commanders:

1. They may be required to report periodically to the police in the place of their residence.

2. They will not be permitted to leave a Zone or Germany without permission.

3. Civilian members in this category may not stand for election at any level but may vote.

4. In addition, in the case of civil servants, retirement or transfer to an office with lesser rank or to another position, possibly with reduction of compensation or rescission of a promotion instituted while the person belonged to the NSDAP, may be ordered. Corresponding

measures may be ordered against persons in economic enterprises including agriculture and forestry.

5. They may be ordered to pay single or recurrent contributions to funds for reparations. When determining contributions, the follower's period of membership, the fees and contributions paid by him, his wealth and income, his family conditions and other relevant factors shall be taken into consideration.

## ARTICLE 12

### EXONERATED PERSONS

No sanction will be applied against persons declared to be exonerated by a tribunal.

## ARTICLE 13

Persons in the categories defined in Article 2 to 6 above who are guilty of specific war crimes or other offences may be prosecuted regardless of their classification under this Directive. Imposing of Sanctions under this Directive shall not bar criminal prosecution for the same offence.

Done at Berlin on the 12th day of October 1946.

R. NOIRET,  
General de Division  
P. A. KUROCHKIN,  
Colonel-General  
Lucius D. CLAY,  
Lieutenant-General  
G. W. E. J. ERSKINE,  
Major-General  
for B. H. ROBERTSON,  
Lieutenant-General

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## PERSONNEL QUESTIONNAIRE \*

(Fragebogen)

WARNING. In the interests of clarity this questionnaire has been written in both German and English. If discrepancies exist, the English will prevail. Every question must be answered as indicated. Omissions or false or incomplete statements will result in prosecution as violations of military ordinances. Add supplementary sheets if there is not enough space in the questionnaire.

\* *Author's Note:* The details of the 'Fragebogen' have been altered several times. The form printed here is representative of the type of questionnaire used in the three Western zones.

## PERSONNEL

Name .....  
Surname      Middle Name      Christian Name  
Identity Card No.....  
Date of birth ..... Place of birth.....  
Citizenship ..... Present address.....  
Permanent residence..... Occupation.....  
Present position..... Position applied for.....  
Position before 1933 .....

## B. NAZI PARTY AFFILIATIONS

Have you ever been a member of the NSDAP ? yes, no. Dates.

Have you ever held any of the following positions in the NSDAP ?

REICHSLEITER or an official in an office headed by any Reichsleiter ?  
yes, no; title of position; dates.

GAULEITER or a Party official within the jurisdiction of any Gau ?  
yes, no; dates; location of office.

KREISLEITER or a Party official within the jurisdiction of any Kreis ?  
yes, no; title of position; dates; location of office.

ORTSGRUPPENLEITER or a Party official within the jurisdiction of an  
Ortsgruppe ? yes, no ; title of position; dates; location of office.

An official in the Party Chancellery ? yes, no; dates; title of  
position.

An official within the Central NSDAP headquarters ? yes, no;  
dates; title of positions.

An official within the NSDAP's Chief Education Office ? In the  
office of the Führer's Representative for the Supervision of the entire  
intellectual and politico-philosophical Education of the NSDAP ? Or  
a director or instructor in any Party training school ? yes, no; dates;  
title of position; Name of unit or school.

Were you a member of the CORPS OF POLITISCHE LEITER ? yes, no;  
Dates of membership.

Were you a leader or functionary of any other NSDAP offices or  
units or agencies (except Formations, Affiliated Organizations and  
Supervised Organizations which are covered by questions under C  
below) ? yes, no; dates; title of position.

Have you any close relatives who have occupied any of the positions named above ? yes, no; if yes, give the name and address and a description of the position.

### C. NAZI 'AUXILIARY' ORGANIZATION ACTIVITIES

Indicate whether you were a member and the extent to which you participated in the activities of the following Formations, Affiliated Organizations or Supervised Organizations:

	Member		Period of Membership	Offices Held	Period
	Yes	No			
<b>Formations:—</b>					
(a) SS	...	...	...	...	
(b) SA	...	...	...	...	
(c) HJ	...	...	...	...	
(d) NSDStB	...	...	...	...	
(e) NSD	...	...	...	...	
(f) NSF	...	...	...	...	
(g) NSK <sub>K</sub>	...	...	...	...	
(h) NSFK	...	...	...	...	
<b>Affiliated Organizations:—</b>					
(a) Reichsbund d. deutsch. Beamten	...	...	...	...	
(b) DAF einschl. KdF	...	...	...	...	
(c) NSV	...	...	...	...	
(d) NSKOV	...	...	...	...	
(e) NS-bund deutsch. Techniker	...	...	...	...	
(f) NSD-Arztebund	...	...	...	...	
(g) NS-Lehrerbund	...	...	...	...	
(h) NS-Rechtswahrerbund	...	...	...	...	
<b>Supervised Organizations:—</b>					
(a) VDA	...	...	...	...	
(b) Deutsches Frauenwerk	...	...	...	...	
(c) Reichskolonialbund	...	...	...	...	
(d) Reichsbund deutsch. Familie	...	...	...	...	
(e) MS-Reichsbund f. Leibesübungen	...	...	...	...	
(f) NS-Reichsbund dtsh. Schwestern	...	...	...	...	
(g) NS-Altherrenbund	...	...	...	...	
<b>Other Organizations:—</b>					
(a) RAD	...	...	...	...	
(b) Deutscher Gemeindetag	...	...	...	...	
(c) NS-Reichskriegerbund	...	...	...	...	
(d) Deutsche Studentenschaft	...	...	...	...	
(e) Reichsdozentenschaft	...	...	...	...	
(f) DRK	...	...	...	...	
(g) 'Deutsche Christen'-Bewegung	...	...	...	...	
(h) 'Deutsche Glaubensbewegung'	...	...	...	...	

Were you ever a member of any NS organization not listed above? yes, no; name of organization; dates; title of position; location.

Did you ever hold the position of Jugendwälter in a school? yes. no.

Have you ever been the recipient of any titles, ranks, medals, testimonials or other honours from any of the above organizations? yes, no. If so, state the nature of the honour, the date conferred, and the reason and occasion for its bestowal.

#### D. WRITINGS AND SPEECHES

List on a separate sheet all publications from 1923 to the present which were written in whole or in part, or compiled, or edited by you, and all addresses or lectures made by you, except those of a strictly technical or artistic and non-political character, giving title, date and circulation or audience. If they were sponsored by any organization, give its name. If none, write 'No speeches or publications.'

## E. EMPLOYMENT

Give a history of your employment beginning with January 1, 1930, and continuing to date, listing all positions held by you, your duties and the name and address of your employer or the governmental department or agency in which you were employed, the period of service, and the reasons for cessation of service, accounting for all periods of unemployment, including attendance at educational institutions and military service.

## F. INCOME

Show the sources and amount of your annual income since January 1, 1933.

Year	Sources of Income	Amount
1933		
1934		
1935		
1936		
1937		
1938		
1939		
1940		
1941		
1942		
1943		
1944		

## G. MILITARY SERVICE

Have you rendered military service since 1919 ? yes, no. In which arm ? Dates. Where did you serve ? Grade or rank. Have you rendered service in para-military organizations ? yes, no. In which ones ? Where ? Dates. Were you deferred from military service ? yes, no. When ? Why ?

Did you serve as a part of the Military Government in any country occupied by Germany including Austria and the Sudetenland ? yes, no. If so, give particulars of offices held, duties performed, territory and period of service.

**H. TRAVEL ABROAD**

List all journeys outside of Germany since 1933.

Countries visited	Dates	Purpose of Journey
.....	.....	.....
.....	.....	.....
.....	.....	.....

Was journey made on your own account ? yes, no. If not, under whose auspices was the journey made ? Persons or organizations visited.

Did you ever serve in any capacity as part of the civil administration of any territory annexed to or occupied by the Reich ? yes, no. If so, give particulars of offices held, duties performed, territory and period of service.

**I. POLITICAL AFFILIATIONS**

Of what political party were you a member before 1933 ?

Have you ever been a member of any anti-Nazi underground party or groups since 1933 ? yes, no. Which one ? Since when ?

Have you ever been a member of any trade union or professional or business organization suppressed by the Nazis ? yes, no.

Have you ever been dismissed from the civil service, the teaching profession or ecclesiastical positions for active or passive resistance to the Nazis or their ideology ? yes, no.

Have you ever been imprisoned, or have restrictions of movement, residence or freedom to practise your trade or profession been imposed on you for racial or religious reasons or because of active or passive resistance to the Nazis ? yes, no. If the answer to any of the above questions is yes, give particulars and the names and addresses of two persons who can attest to the truth of your statement.

**J. REMARKS**

.....  
.....  
.....

The statements on this form are true.

Signed..... Date.....  
Witness.....

## COMPARATIVE ANALYSIS OF DENAZIFICATION

(January 1, 1947)

## I. Persons Individually Guilty of War Crimes and Offences against Peace and Humanity:-

		<i>British Zone</i>	<i>U.S. Zone</i>	<i>French Zone</i>	<i>U.S.S.R. Zone</i>
In Custody	...	3,038	12,425	1,930	14,820
Tried	...	527	710	320	14,240
Convicted:					
Death Penalty	...	124	206	20	138
Other Penalties	...	252	414	292	13,060
		376	620	312	13,198

## II. Persons Automatically Interned, as Nazi Leaders, High Officials or Influential Nazi Supporters:-

	<i>British Zone</i>	<i>U.S. Zone</i>	<i>French Zone</i>	<i>U.S.S.R. Zone</i>
Nazi Leaders	...	27,477	45,020	4,018 50,565
High Government Officials	...	4,073	15	— 42
General Staff	...	200	237	— —
Others	...	2,750	5,734	6,905 9,358
Total:	...	34,500	51,006	10,923 59,965

Originally interned, but released  
as at 1.1.47     ...     ...     34,000     44,244     8,040     7,214

## III. Persons Tried as Members of Nazi Organizations (Control Council Directive, No. 38):-

	<i>British Zone<sup>1</sup></i>	<i>U.S. Zone</i>	<i>French Zone</i>	<i>U.S.S.R. Zone</i>
Tried	...	2,296	169,282	17,353 18,328
Convicted <sup>2</sup>	...	—	144,139	17,033 18,061

<sup>1</sup>Figures are for the period between September 6, 1946, and May 31, 1947, and include all categories, from I. to V. (p. 117).

<sup>2</sup>The vast majority of these convictions in the U.S. Zone are fines, in the French Zone (where the number is much smaller) internments.

## IV. Persons Removed from Public or Important Private Positions because of Nazi Affiliations (Control Council Directive, No. 24):-

	<i>British Zone<sup>1</sup></i>	<i>U.S. Zone</i>	<i>French Zone</i>	<i>U.S.S.R. Zone</i>
Removed	...	186,692	292,089	69,068 307,370
Excluded	...	104,106	81,673	— 83,108
Retained	...	approx. 151,000	1,032,705	281,019 162,692

<sup>1</sup>By April 30, 1947, a total of 1,785,507 persons had been screened, of which 320,017 had been removed or excluded from public office.

\* Author's Note: Based on Official Figures. Arrangement, selection and notes are my own.

## 5. ECONOMIC Reparations

### THE PLAN FOR REPARATIONS AND THE LEVEL OF POST-WAR GERMAN ECONOMY IN ACCORDANCE WITH THE BERLIN PROTOCOL

1. In accordance with the Berlin Protocol the Allied Control Council is directed to determine the amount and character of the industrial capital equipment unnecessary for the German peace economy and therefore available for reparations.

The guiding principles regarding the plan for reparations and the level of Germany's post-war economy in accordance with the Berlin Protocol are:—

- (a) Elimination of the German war potential and the industrial disarmament of Germany.
- (b) Payment of reparations to the countries which had suffered from German aggression.
- (c) Development of agricultural and peaceful industries.
- (d) Maintenance in Germany of average living standards not exceeding the average standard of living of European countries (excluding the United Kingdom and the Union of Soviet Socialist Republics).
- (e) Retention in Germany, after payment of reparations, of sufficient resources to enable her to maintain herself without external assistance.

2. In accordance with these principles, the basic elements of the plan have been agreed. The assumptions of the plan are:—

- (a) That the population of post-war Germany will be 66.5 million.
- (b) That Germany will be treated as a single economic unit.
- (c) That exports from Germany will be acceptable in the international markets.

#### PROHIBITED INDUSTRIES

3. In order to eliminate Germany's war potential, the production

of arms, ammunition and implements of war, as well as all types of aircraft and seagoing ships, is prohibited and will be prevented.

4. All industrial capital equipment for the production of the following items is to be eliminated:—

- (a) Synthetic gasoline and oil
- (b) Synthetic rubber
- (c) Synthetic ammonia
- (d) Ball and taper roller bearings
- (e) Heavy machine tools of certain types
- (f) Heavy tractors
- (g) Primary aluminium
- (h) Magnesium
- (i) Beryllium
- (j) Vanadium produced from Thomas slags
- (k) Radio-active materials
- (l) Hydrogen peroxide above 50% strength
- (m) Specific war chemicals and gases
- (n) Radio transmitting equipment

Facilities for the production of synthetic gasoline and oil, synthetic ammonia, and synthetic rubber, and of ball and taper roller bearings, will be temporarily retained to meet domestic requirements until the necessary imports are available and can be paid for.

#### RESTRICTED INDUSTRIES

##### *Metallurgical Industries*

###### 5. Steel

- (a) The production capacity of the steel industry to be left in Germany should be 7·5 million ingot tons. This figure should be subject to review for further reduction should this appear necessary.
- (b) The allowable production of steel in Germany should not exceed 5·8 million ingot tons in any future year without the specific approval of the Allied Control Council, but this figure will be subject to annual review by the Control Council.
- (c) The steel plants to be left in Germany under the above programme should, so far as practicable, be the older ones.

### 6. Non-Ferrous Metals

The annual consumption of non-ferrous metals, including exports of products containing these metals, is fixed at the following quantities:—

Copper . . . . .	140,000 tons
Zinc . . . . .	135,000 ,,
Lead . . . . .	120,000 ,,
Tin . . . . .	8,000 ,,
Nickel . . . . .	1,750 ,,

### Chemical Industries

7. (a) *Basic Chemicals.* In the basic chemical industries there will be retained 40% of the 1936 production capacity (measured by sales in 1936 values). This group includes the following basic chemicals: nitrogen, phosphate, calcium carbide, alkalis, sulphuric acid and chlorine. In addition, to obtain required quantities of fertiliser for agriculture, existing capacity for the production of nitrogen through the synthetic ammonia process will be retained until the necessary imports of nitrogen are available and can be paid for.
- (b) *Other Chemicals.* Production capacity will be retained for the group of other chemical production in the amount of 70% of the 1936 production capacity (measured by sales in 1936 values). This group includes chemicals for building supplies, consumer goods items, plastics, industrial supplies and other miscellaneous chemical products.
- (c) *Dyestuffs, Pharmaceuticals and Synthetic fibres.* In the pharmaceutical industry there will be retained capacity for the annual production of 80% of 1936 production (measured by sales in 1936 values). Capacity will be retained to produce annually 36,000 tons of dyestuffs and 185,000 tons of synthetic fibres.

### Machine Manufacturing and Engineering

8. (a) *Machine Tools.* For the machine tool industry there will be retained 11.4% of 1938 capacity, with additional restrictions on the type and size of machine tools which may be produced.
- (b) *Heavy Engineering.* In the heavy engineering industries there will be retained 31% of 1938 capacity. These industries produce metallurgical equipment; heavy mining machinery; material handling plant; heavy power equipment (boilers and turbines; prime movers; heavy compressors; turbo-blowers and pumps).

- (c) *Other Mechanical Engineering.* In other mechanical engineering industries there will be retained 50% of 1938 capacity.

This group produces constructional equipment; textile machinery; consumer goods equipment; engineering small tools; food processing equipment; woodworking machines; other machines and apparatus.

- (d) *Electro-engineering.* In the electro-engineering industries there will be retained 50% of 1938 production capacity (based on sales in 1936 value). Capacity to produce heavy electrical equipment is to be reduced to 30% of 1938 production or RM 40,000,000 (1936 value). Heavy electrical equipment includes generators and converters, 6,000 KW and over; high tension switch gear; and large transformers, 1,500 KVA and over.

Electro-engineering other than heavy electrical equipment includes electric lamps and light fittings, installation materials, electric heating and domestic appliances, cables and wires, telephone and telegraph apparatus, domestic radios, and other electrical equipment.

Export of specified types of radio receiving sets is forbidden.

- (e) *Transport Engineering.*

(i) In the automotive industry capacity will be retained to produce annually 80,000 autos, including 40,000 passenger cars and 40,000 trucks, and for 4,000 light road tractors.

(ii) Capacity will be retained to produce annually 10,000 motor-cycles with cylinder sizes between 60 and 250 cubic centimetres. Production of motor-cycles with cylinder sizes of more than 250 cubic centimetres is prohibited.

(iii) In the locomotive industry available capacity will be used exclusively for the repair of the existing stock of locomotives in order to build up a pool of 15,000 locomotives in 1949. A decision will be made later as to the production of new locomotives after 1949.

(iv) Sufficient capacity will be retained to produce annually 30,000 freight cars, 1,350 passenger coaches, and 400 luggage vans.

- (f) *Agricultural Machinery.* To permit maximisation of agriculture, capacity will be retained for an annual production of 10,000 light agricultural tractors. Existing capacity for the production of other agricultural equipment, estimated

at 80% of 1938 levels, is to be retained, subject to restrictions on the type and power of the equipment which may be produced.

- (g) In estimating capacities there will be taken into account the production of normal quantities of spare parts for transport and agricultural machinery.
- (h) *Optics and Precision Instruments.* Capacity will be retained to produce precision instruments in the value of RM 340,000,000 (1936 value), of which RM 220,000,000 is estimated as required for domestic use and RM 120,000,000 for exports. A further limitation for this industry is possible subject to the recommendations of the Committee for Liquidation of War Potential.

#### MINING INDUSTRIES

- 9. (a) *Coal.* Until the Control Council otherwise decides, coal production will be maximised as far as mining supplies and transport will allow. The minimum production is estimated at 155 million tons (hard coal equivalent), including at least 45 million tons for export. The necessary supplies and services to this end will be arranged to give the maximum production of coal.
- (b) *Potash.* The production of potash is estimated at over 100% of the 1938 level.

#### ELECTRIC POWER

- 10. There will be retained an installed capacity of 9·0 million KW.

#### CEMENT

- 11. A capacity for the production of 8 million tons of cement annually will be retained.

#### OTHER INDUSTRIES

- 12. The estimated levels of the following industries have been calculated as shown below as necessary for the German economy in 1949:—

- (a) *Rubber* 50,000 tons, including 20,000 tons from reclaimed rubber and 30,000 tons imports.
- (b) *Pulp, Paper and Printing* 2,129,000 tons based on 26 kg per head per annum in 1949, plus 400,000 tons for export.

- (c) *Textiles and Apparel* 665,000 tons of fibres based on 10 kg per head in 1949, including 2 kg for export.
- (d) *Boots and Shoes* 113 million pairs based on 1·7 pairs per head in 1949 (figure excludes needs of occupying forces).

Production may exceed the above estimates in this paragraph (Other Industries) unless otherwise determined by the Control Council.

13. *Building.* No level will be determined for 1949. The industry will be free to develop within the limits of available resources and the licensing system.

14. *Building Materials Industries (excluding cement).* Existing capacity for building materials will be retained. Production will be in accordance with building licensing and export requirements.

15. *Other Unrestricted Industries.* For the following industries no levels have been determined for 1949. They are free to develop within the limitations of available resources. These industries are as follows:—

- (a) Furniture and woodwork
- (b) Flat glass, bottle and domestic glass
- (c) Ceramics
- (d) Bicycles
- (e) Motor-bicycles under 60 cc
- (f) Potash.

#### GENERAL LEVEL OF INDUSTRY

16. It is estimated that the general effect of the plan is a reduction in the level of industry as a whole to a figure about 50 or 55% of the pre-war level in 1938 (excluding building and building materials industries).

#### EXPORTS AND IMPORTS

17. The following agreement has been reached with respect to exports and imports:—

- (a) That the value of exports from Germany shall be planned as RM 3 billion (1936 value) for 1949, and that sufficient industrial capacity shall be retained to produce goods to this value and cover the internal requirements in Germany in accordance with the Potsdam Declaration.
- (b) That approved imports will not exceed RM 3 billion (1936 value) as compared with RM 4.2 billion in 1936.
- (c) That of the total proceeds from exports, it is estimated that not more than RM 1.5 billion can be utilised to pay for

imports of food and fodder if this will be required with the understanding that, after all imports approved by the Control Council are paid for, any portion of that sum not needed for food and fodder will be used to pay for costs of occupation and services such as transport, insurances, etc.

#### DETERMINATION OF CAPACITIES AVAILABLE FOR REPARATIONS

18. After approval of this plan the existing capacities of the separate branches of production shall be determined, and a list of enterprises available for reparations shall be compiled.

19. After decisions have been given on the matter now referred to the Co-ordinating Committee, the Economic Directorate would propose to prepare the final plan embodying those decisions and including a description of the various features of the plan such as disarmament, reparations, post-war German economy and the German balance of trade.

Berlin, March 1946.

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## Trade Associations (British Zone)

### EXCERPTS FROM ECONOMIC SUB-COMMISSION TECHNICAL INSTRUCTION No. 12

(August 23, 1946)<sup>1</sup>

#### *Functions*

3. A Trade Association is a voluntary association of any firms engaged in one trade or branch of industry for the purpose of protecting and furthering their common interests, subject to the conditions which are enumerated below.

4. Trade Associations will be only advisory in function.

5. Towards the authorities the Trades Associations will represent the individual and collective interests of their member firms and their collective views on any subjects affecting their industry. The authorities may seek the advice of the Trades Associations on such subjects.

<sup>1</sup> A substantially similar Instruction is in force in the U.S. Zone.

6. Towards their members the Trades Associations will act as a source of information and guidance. They will promote the exchange of economic and technical knowledge throughout their industry. They may represent their members in discussions with Trade Unions on labour conditions and may conclude contracts regulating wages and working conditions as soon as the principle of collective bargaining has been established.

7. The Trade Association will have no powers of control over its industry either delegated by the authorities or assumed by itself. It must not indulge in any restrictive economic practices such as those which characterise cartels.

In particular, the Trade Association will not exercise any authority or control over:—

- (a) Allocation of orders.
- (b) Allocation of raw materials and semi-finished goods.
- (c) Allocation of labour.
- (d) Production quotas.
- (e) Distribution, sales quotas, marketing, bulk purchasing.
- (f) Price fixing and price control.
- (g) Collection of official statistics.

(In the collection of statistics, Trades Associations are at liberty to collate such information on technical or other subjects as their members are willing to supply, but it is emphasised that statistics which the authorities require as a basis for carrying out functions (a) to (f) above, will only be obtained through official statistical organisations.)

8. Any such functions which are at present performed by Trades Associations will be transferred at once to the relevant departments of the German economic administration.

9. In official matters Trades Associations will deal only with the German authorities. If the British authorities wish to approach a Trade Association they will normally do so through the German authorities.

10. Trades Associations will not be used by the authorities as a channel for the communication of official instructions to individual firms or to those sections of industry which the associations represent.

They may, however, be used for the dissemination of general information.

*Supervision*

*By the German Authorities*

21. The responsibility for supervising the activities of Trades Associations will rest in the first instance with the Branches and Sections of the German Economic Administration for the British Zone (GEABZ)<sup>1</sup> and of the German Regional Economic Offices (Hauptabteilungen für Wirtschaft). These will maintain a close watch upon the Trades Associations operating within their industrial sphere. In particular, they will ensure that such Trades Associations :—

- (a) have applied for registration with GEABZ.
- (b) are not exceeding their functions as defined in paragraphs 3-10 of this Instruction.
- (c) are not growing into excessive concentrations of economic power.

22. Any irregularities will be reported at once to the Economic Organisations Section, GEABZ, who will either issue a warning to the Association concerned or will order its dissolution. Until the Economic Organisations Section, GEABZ, receives executive powers, it will only order the dissolution of an Association after reference to, and upon the instructions of, German Organisations Branch, Economic Sub-Commission.

*By the British Authorities*

23. The Branches of Trade and Industry Division and their representatives in the Regions will report to German Organisations Branch, Economic Sub-Commission (ECOSC), any infraction on the part of Trades Associations which they themselves cannot correct.

24. German Organisations Branch, ECOSC, will, if necessary, order the dissolution of an Association.

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## Ordinance 78<sup>2</sup>

### PROHIBITION OF EXCESSIVE CONCENTRATION OF GERMAN ECONOMIC POWER

This Ordinance is enacted in accordance with paragraph 12 of the Postdam Agreement in order (i) to prevent Germany from endangering

<sup>1</sup> This has now been merged with the bizonal Directorate for Economic Administration.

<sup>2</sup> A similar Ordinance has been enacted in the U.S. and French zones. The limitations applying in the British Zone follows from Regulation No. 1 (below), in conjunction with Art. I, 3 of this Ordinance.

the safety of her neighbours or again constituting a threat to international peace; (ii) to destroy Germany's economic potential to wage war; and (iii) to ensure that measures taken for Germany's reconstruction are consistent with peaceful and democratic purposes; (iv) to lay the groundwork for building a healthy and democratic German Economy.

To this end it is desirable that the German economy be reorganized and that concentrations of economic power as exemplified, in particular, by cartels, syndicates, trusts, combines, and other types of monopolistic or restrictive arrangements which could be used by Germany as instruments of political or economic aggression, be eliminated at the earliest practicable date. It is likewise desirable to prevent Germany from using international cartels and similar international arrangements in the same manner.

IT IS THEREFORE ORDERED AS FOLLOWS:—

## ARTICLE I

### PROHIBITION OF RESTRICTIVE AND MONOPOLISTIC ENTERPRISES AND PRACTICES

1. Excessive concentrations of German economic power, whether within or without Germany and whatever their form or character, insofar as such concentrations or any part or activity thereof are subject to the jurisdiction of Military Government, are prohibited, their activities are declared illegal and they shall be eliminated, except as hereinafter provided in Article III.

2. Cartels, combines, syndicates, trusts, associations or any other form of understanding or concerted undertaking between persons, which have the purpose or effect of restraining, or of fostering monopolistic control of domestic or international trade or other economic activity, or of restricting access to domestic or international markets are hereby declared to be excessive concentrations of economic power, within the purview of this Ordinance.

3. All economic enterprises having their headquarters located in the British Zone and employing in Germany, on the effective date of this Ordinance or thereafter, directly or indirectly, more than 10,000 persons shall be examined as *prima facie* constituting excessive concentrations of economic power and shall be dealt with in accordance with the provisions of this Ordinance if Military Government or its designated agency determines that these enterprises do, in fact, constitute excessive concentrations of economic power.

4. It shall be the duty of such agency as Military Government shall designate for the purpose to determine the general or special circumstances under which any enterprise or activity, not included within the definition set out in paragraphs 2 and 3 above, but whose character or activities are deemed objectionable, shall be considered to constitute an excessive concentration of economic power. In making such determination, consideration shall be given to the following factors:—

- (1) The percentage of the total German production or other economic activity in the field in which the enterprise operates which is produced or controlled by such enterprise.
- (2) The asset value of the enterprise and its annual volume of business.
- (3) The number of persons directly or indirectly employed by the enterprise.
- (4) The character of the production and the nature of the activity of the enterprise.
- (5) The nature and extent of the participation of the enterprise in any contract, agreement, combination, practice, or other arrangement or relationship of a restrictive or monopolistic character, such as is referred to in paragraph 2 above, or which tends to create special privileges in the purchase or sale of materials, to restrict production or distribution, to fix prices, or to allocate business or sales territories, or which provides for the exclusive exchange of patents or technical information.
- (6) Any grouping of enterprises or activities of similar or dissimilar character or covering distinct stages of production.

## ARTICLE II PROHIBITION OF GERMAN PARTICIPATION IN INTERNATIONAL CARTELS

5. Participation, directly or indirectly, by any German person within the jurisdiction of Military Government in any cartel, combination, enterprise, activity, or relationship which has the purpose or the effect of restraining international trade or other international economic activity is hereby declared illegal and is prohibited. This provision shall not be construed, however, to prohibit ordinary agency agreements and transactions of purchase and sale which have not that purpose or effect.

## ARTICLE III EXEMPTIONS

6. The agency designated by Military Government to enforce this Ordinance will consider and, in approved cases, grant exemptions in

respect of any agreement, arrangement, act or purpose otherwise prohibited by this Law, if it is considered that the character or activities of the enterprise under review:

- (a) Are not repugnant to the purposes of this Law; or
- (b) Are required to further the declared objectives of Military Government.

#### ARTICLE IV

##### POWERS AND DUTIES OF THE IMPLEMENTING AGENCY

7. The Agency designated by Military Government to enforce this Ordinance will take such action in regard to the elimination of enterprises or activities prohibited by this Ordinance as it finds appropriate to accomplish the purposes thereof, including the elimination of corporate entities, the re-distribution and removal of property, investments and other assets, and the cancellation of obligation of cartels, syndicates, trusts, combines, and other organizations of a monopolistic or restrictive character and shall to the extent appropriate to accomplish the purposes of this Ordinance have the power to:—

- (a) Issue and enforce such rules, regulations, orders, directives and definitions as it may deem appropriate;
- (b) Determine the principles, plans and procedure for the elimination of prohibited enterprises;
- (c) Consider reports and proposed plans for elimination of enterprises and activities prohibited by this Ordinance and for the establishment of deconcentrated or reorganized production units;
- (d) Investigate, collect and compile information concerning the properties, products, ownership, management, control, organization, business and business conduct of any person or enterprise and its relation to other persons or enterprises wherever situated;
- (e) Require the compilation and submission of information, and the keeping of records, seize or require the production of records, books of account, contracts, agreements, correspondence, or papers; require the attendance and testimony of witnesses under oath and the production of evidence;
- (f) Seize, hold, or require the conveyance of property; direct the termination or dissolution of any contract, enterprise, arrangement, or relationship; and take such other measures as it may

deem appropriate and consistent with the provisions of this Ordinance;

- (g) Require enterprises subject to the prohibitions of Article I to submit plans for the disposal of assets or other appropriate action for the purpose of compliance with this Ordinance; approve such plans; and prohibit unauthorised transfers of property by such enterprises prior to such approval.

8. The agency referred to in paragraph 7 above may delegate to appropriate German governmental agencies such powers, and may issue such directives with respect thereto, as it may deem necessary for the enforcement and application of this Ordinance.

## ARTICLE V

### DEFINITIONS

9. As used in this Ordinance:—

- (a) The term 'person' shall mean any natural or juristic person, existing under public or private law, including associations, corporations or government agencies;
- (b) The terms 'enterprise,' 'activity' and 'relationship' shall include every kind of economic, business or financial instrumentality, activity or person, whether in the form of a cartel, trust, combine, stock company, syndicate, concern, aggregate of firms or bodies, or otherwise, and whether related by agreement, combination, association or understanding;
- (c) The expression 'cartels, combines, syndicates, trusts, associations, or any other form of understanding or concerted undertaking between persons, which have the purpose or effect of restraining, or fostering monopolistic control of, domestic or international trade or other economic activity, or restricting access to domestic or international markets' shall include the following:—
- (1) The fixing of prices or the terms or conditions in the purchase or sale of any product or thing;
  - (2) The exclusion of any person from any territorial market or field of business activity, the allocation of customers or the fixing of sale or purchase quotas except insofar as such arrangements are not designed to reduce competition and are merely *bona fide* marketing arrangements between a particular enterprise and its distributing agents with respect to its own products;

- (3) The allocation of distributors or the allocation of products among customers;
  - (4) The boycott of, or discrimination against, any manufacturer, distributor, consumer, or other person for the purpose of eliminating or preventing competition;
  - (5) The limitation of production or the fixing of production quotas;
  - (6). The suppression of technology or invention, whether patented or unpatented;
  - (7) The devising of any arrangement in connection with the exploitation of patents or other similar exclusive privileges so as to extend the monopoly or privilege to matters not contained in the authorised grant;
- (d) The terms 'ownership' and 'control' shall include every kind of economic business, or financial relationship which has the effect of establishing common or concerted action among two or more business units, whether in the form of majority or minority stock participation; direct or indirect power to vote shares; ownership of certificates or other evidence of indebtedness carrying management privileges; personal relationships such as common offices or directorships; contractual arrangements or agreements; or any other relationship having the like effect.

## ARTICLE VI CONFLICTING LAWS REPEALED

10. This Ordinance, and all regulations, orders and directives issued under it, shall be deemed to repeal, alter, amend or supersede all provisions of German law inconsistent therewith.

## ARTICLE VII PENALTIES

11. Any judicial proceedings under this Ordinance shall be taken before either German courts or Control Commission courts as Military Government shall decide.

12. Any person violating, or evading, or attempting to violate or evade or procuring the violation of any provision of this Ordinance or of any regulation, order or directive issued thereunder shall, upon

conviction, be liable to a fine of not more than RM 200,000 or to imprisonment for not more than ten (10) years, or both.

## ARTICLE VIII EFFECTIVE DATE

13. This Ordinance shall become effective on the 12 February, 1947, provided, however, that for a period of six months thereafter, the continuation of acts or conditions prohibited under paragraph 3 of Article I shall not subject the violator to criminal prosecution. If it appears to the agency designated by Military Government that, in the case of a particular enterprise, a longer period is required to effect compliance with this Ordinance, the said period of six months may be extended as may be necessary.

BY ORDER OF MILITARY GOVERNMENT.

## REGULATION No. I

### I. PURPOSE OF THE REGULATION

This regulation is issued under and in amplification of Ordinance No. 78 and shall become effective on the 12 February, 1947. It has the purpose of:—

- (a) Defining the procedure to be adopted by enterprises affected by Ordinance No. 78 (hereinafter called 'subject' enterprises);
- (b) Defining the procedure which shall govern applications for exemptions from the operation of the Ordinance and requests for interpretation;
- (c) Defining the rights of subject enterprises to appeal.

### II. EXEMPTIONS

(A) Exemption is hereby granted to the Reichsbahn, the Reichspost, and to Public Utilities in the British Zone except that Military Government or its designated agency may require them to submit reports and any other relevant information.

(B) Exemption is also granted to enterprises which are taken into control by Military Government, except that Military Government or its designated agency may call upon the controlling authorities to submit reports and any other relevant information. At the effective date of this Regulation these enterprises comprise:—

I.G. Farben Industrie      Taken into control under General Order No. 2 pursuant to Law No. 52.

F. Krupp	...	...	Taken into control under General Order No. 3 pursuant to Law No. 52.
The Coal Industry	...	...	Taken into control under General Order No. 5 pursuant to Law No. 52.
The Iron and Steel Industry			Taken into control under General Order No. 7 pursuant to Law No. 52.

### III. APPLICATION OF THIS REGULATION

(A) This regulation applies to every German economic enterprise falling within the scope of Articles I and II of Ordinance No. 78 and subject to the jurisdiction of British Military Government.

(B) In every case the size and character of the whole enterprise, whether totally within the jurisdiction of British Military Government or not, will be considered in determining the standing of the enterprise in relation to Ordinance No. 78.

### IV. PERSONS RESPONSIBLE FOR COMPLIANCE WITH THIS REGULATION

Owners, officers, directors and trustees of subject enterprises shall be responsible for compliance with this regulation. If such owners, officers and directors are outside the jurisdiction of British Military Government, the German managers and individuals exercising supervision of the property of the subject enterprise which is located in the British Zone shall be responsible for such compliance.

### V. PROCEDURE TO BE FOLLOWED BY SUBJECT ENTERPRISES

(A) Every subject enterprise shall submit to the Office of the Economic Sub-Commission (Decartelization Branch) Berlin a report in triplicate on or before the 1st April, 1947, setting out the following information:—

- (a) A list of all properties and assets, both tangible and intangible, which the subject enterprise owned or controlled at the effective date of Ordinance No. 78;
- (b) A statement showing all cartels, agreements and practices prohibited by Ordinance No. 78, in which the subject enterprise has been a participant since 1st January, 1938;
- (c) A statement of the names, addresses and holdings of all stock holders of record, including a statement of all beneficial owners known;
- (d) A copy of the most recent balance sheet, and copies of income and profit and loss statements for the latest twelve month period in respect of which such statements are available.

- (e) A statement of the highest number of persons employed by the enterprise at any time during the calendar year preceding the date of its report.
- (B) Every enterprise which shall hereafter become subject to Ordinance No. 78 either by increase in size or by the nature of its relationships or activities, shall immediately upon such development, comply with the provisions of this regulation.
- (C) Where there is a doubt as to whether an enterprise is subject to Ordinance No. 78 the report will be completed and returned with a memorandum requesting a ruling on any doubtful points.
- (D) Where an enterprise falls within the scope of Article I and II of Ordinance No. 78, but it is contended that an exemption from the operation of the Ordinance shall be granted, the report will be completed and submitted with a memorandum requesting exemption and setting out the grounds therefor.

(E) The designated agency of Military Government may in pursuance of paragraph 4 of Article I of Ordinance No. 78, require any German firm within its jurisdiction whose activities appear objectionable, regardless of its size and character, to render a report within a stated period.

## VI. ENFORCEMENT OF THE REGULATION

- (A) The designated agency of Military Government will scrutinize all reports received and will notify each enterprise, according to its findings, whether it:—
  - (a) Comes within the scope and must comply with Ordinance No. 78; or
  - (b) is exempted from the operation of this Regulation.

(B) Subject enterprises which receive orders to decentralize or otherwise comply with Ordinance No. 78 shall, within three calendar months of the issuance of the order, prepare and submit a plan for dispersing their assets or otherwise complying with the order and on approval or amendment of this plan by the designated agency of Military Government shall proceed to carry it out within the prescribed time limit.

## VII. APPROVAL OF PROPOSED SALES

No enterprise which comes within the purview of paragraph 3 of Article I of Ordinance No. 78, shall subsequent to the effective date of Ordinance No. 78 dispose of any of its capital assets by sale or otherwise

without the express written approval of Military Government or its designated agency.

### VIII. HEARINGS AND APPEALS

(A) All evidence relied upon by the subject enterprise in support of its claim for exemption, must be submitted to the agency designated by Military Government for the purpose of determining whether the enterprise comes within the scope of Ordinance No. 78, or whether it is to be exempted from the operation of the Ordinance. Oral argument before such agency will be permitted only when it is established that the enterprise cannot adequately present its case in writing. A request for oral argument must be filed when the claim for exemption is submitted in writing. Presentation of new or additional evidence will not be permitted at the hearing of such oral argument. The decision of such agency shall be in writing and a copy thereof shall be transmitted promptly to the subject enterprise.

(B) An appeal to such body as shall be designated by Military Government may be preferred by the aggrieved person from the decision of the agency within 14 days after the receipt of a copy thereof. If such appeal is found by the appellate body to have been preferred without good cause and solely for the purpose of delay, it shall be dismissed forthwith and the appellant shall thereupon become liable to the penalties prescribed in Ordinance No. 78.

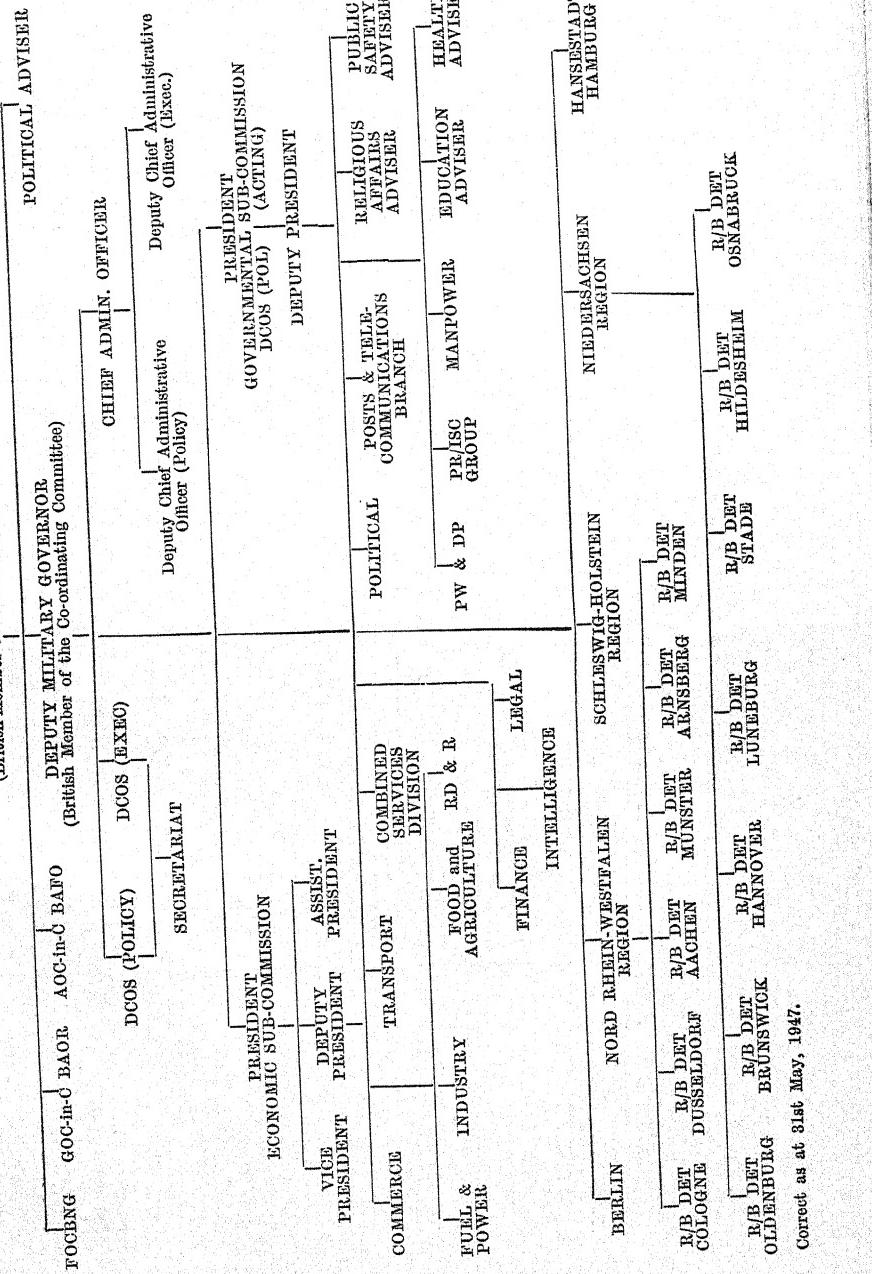
### IX. PENALTIES

Failure to comply with the provisions of this regulation or of any order or directive issued thereunder or any wilful falsification of information required to be submitted thereby shall be punishable under Article VII of Ordinance No. 78.

# Organisation of British Military Government

## C-in-C and MILITARY GOVERNOR

(British Member of the Control Council)



## 6. STATISTICS

### Population

(Area and Population of the Four Zones of Occupation and Berlin according to the Provisional  
Result of the Population Census of 29 October, 1946)

Regions	Area ( <sup>1</sup> ) 1,000 sq. kms.	Population						Increase (+) or decrease (-) of total population 1946 to 1946 1946 to 1939	Females per 1,000 males	Persons per sq. km.	Number					
		29 October, 1946 ( <sup>2</sup> )			17 May, 1933 ( <sup>3</sup> )											
		Males	Females	Total	Males	Females	Total									
Thousands																
BRITISH ZONE																
Land Schleswig-Holstein	15.7	1,211.0	1,439.9	2,650.9	817.2	772.7	1,589.9	+ 66.7	169.3	1,189						
Hansestadt Hamburg	0.7	630.5	765.2	1,426.7	820.1	801.6	1,711.7	- 16.6	1,910.9	1,158						
Land Niedersachsen	47.3	2,961.1	3,487.3	6,448.4	2,305.4	2,236.4	4,541.8	+ 42.0	136.4	1,178						
Land Nordrhein-Westfalen	34.0	5,374.4	6,424.2	11,798.6	5,822.5	6,124.0	11,946.5	- 1.2	346.7	1,195						
Total:	97.7	10,207.0	12,117.6	22,324.6	9,765.2	10,024.7	19,789.9	+ 12.8	228.5	1,187						
U.S. ZONE																
Bayern	70.3	4,069.0	4,914.0	9,983.0	3,444.3	3,563.3	7,037.6	+ 27.7	127.9	1,207						
Württemberg-Baden	15.7	1,643.2	2,006.4	3,649.6	1,523.0	1,635.6	3,178.6	+ 14.8	232.4	1,221						
Hessen	21.1	1,843.6	2,206.6	4,050.2	1,693.8	1,785.3	3,479.1	+ 16.3	191.8	1,200						
Bremen	0.4	228.9	262.7	491.6	284.0	278.3	562.3	- 12.5	1,216.8	1,148						
Total:	107.5	7,784.7	9,389.7	17,174.4	6,945.1	7,312.5	14,257.6	+ 20.5	159.8	1,207						

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	FRENCH ZONE				U.S.S.R. ZONE			
Stadt Baden ...	9.9	611.4	670.6	1,181.9	557.3	626.8	1,184.1	- 1.0
Süd-Württemberg ...	10.4	483.4	625.0	1,108.4	521.6	554.2	1,075.8	+ 3.0
Rheinland-Pfalz ...	19.6	1,197.0	1,516.7	2,713.7	—	—	2,986.6	- 9.1
Saarland ...	1.9	395.2	479.2	874.4	419.3	423.1	842.4	+ 3.8
Total:	41.8	2,587.0	3,291.4	5,878.4	—	—	6,088.9	- 3.5
								140.6   1,272
Mark Brandenburg ...	26.9	1,073.6	1,462.1	2,535.7	1,231.7	1,182.2	2,413.9	+ 5.0
Mecklenburg-Vorpommern ...	23.6	921.7	1,226.8	2,143.5	718.9	686.5	1,405.4	+ 52.9
Sachsen-Anhalt ...	24.4	1,808.3	2,363.8	4,162.1	1,718.2	1,723.8	3,442.0	+ 20.9
Thüringen ...	16.8	1,279.8	1,663.4	2,943.2	1,196.9	1,233.7	2,430.6	+ 21.1
Land Sachsen	17.1	2,335.2	3,208.2	6,543.4	2,686.9	2,878.3	5,465.2	+ 1.4
Total:	107.8	7,418.6	9,914.3	17,329.9	7,452.6	7,704.5	15,167.1	+ 14.4
								160.8   1,336
BERLIN								
British Sector ...	0.17	242.9	359.6	602.5	388.9	492.7	881.6	- 31.7
U.S. Sector ...	0.21	308.5	586.5	986.0	593.7	737.5	1,331.2	- 26.0
French Sector ...	0.10	176.4	246.0	421.4	245.1	276.1	521.2	- 19.1
U.S.S.R. Sector ...	0.40	477.4	692.9	1,170.3	737.1	860.4	1,687.5	- 26.3
Total:( <sup>4</sup> )	0.83	1,294.9	1,885.4	2,190.3	1,964.8	2,356.7	4,521.5	- 26.4
								3,601.0   1,456
TOTAL GERMAN TERRITORY								
355.68	29,292.2	36,598.4	65,890.6	—	—	59,615.0	+ 10.6	186.3   1,249

<sup>1</sup> As at 29 October, 1946, but the formation of the Länder Bremen and Rheinland-Pfalz has been taken into consideration.

<sup>2</sup> Actual population, including persons held by occupation authorities (prisoners of war, displaced persons, civilian internees, etc.).

<sup>3</sup> Resident population (Wohnbevölkerung).

<sup>4</sup> Including bargemen.

From: Statistisches Amt für die Britische Besatzungszone.

## Parliamentary Election Results IN THE FOUR ZONES AND BERLIN

### U.S. ZONE Landtag Elections

(November 24, 1946 — December 1, 1946)

Christian-Democrats	...	...	2,575,776 (43.5%)
Social Democrats	...	...	1,952,632 (33.0%)
Communists	...	...	496,549 ( 8.4%)
Liberals	...	...	671,025 (11.3%)
Others	...	...	224,964 ( 3.8%)
<b>Total:</b>			<b>5,920,946 (100%)</b>

### B R I T I S H Z O N E Landtag Elections

(April 20, 1947)

Party	Votes	Direct Seats	Seats from Reserve List
Independent	1,342	—	—
RVP (Rheinische Volkspartei)	13,251	—	—
DRP (Deutsche Rechtspartei)	32,124	—	—
DKP <sup>1</sup>	32,331	—	—
SSV (South Schleswig Assn.)	82,684	1	3
NLP (Niedersachsen Landespartei)	440,367	20	7
FDP (Free Democratic Party)	567,779	2	23
Zentrum (Centre Party)	591,458	3	23
KPD (Communist Party)	889,865	3	33
CDU (Christian Democrat Party)	2,723,042	111	32
SPD (Socialist Democratic Party)	3,130,810	145	27

<sup>1</sup> DKP (Conservative Party) is the name by which the DRP (Deutsche Rechtspartei) is known in Land Schleswig-Holstein.

### FRENCH ZONE Landtag Elections

(May 18, 1947)

	No. of Votes	%
Christian Democrats	984,531	50.2
Social Democrats	572,667	29.2
Liberals	240,262	12.3
Communists	159,690	8.1
<b>Total :</b>	<b>1,957,592</b>	<b>100.0</b>

**SOVIET ZONE**  
**Landtag Elections**  
(September—October, 1946)

		<i>Votes</i>	<i>Seats</i>
Socialist Unity Party	...	4,556,691	244
Liberal Democratic Party	...	2,328,064	127
Christian Democratic Union	...	2,292,329	133
Peasants Mutual Aid Assn.	...	256,213	15

**BERLIN ELECTIONS**  
(October 20, 1946)

<i>Party</i>		<i>Votes</i>	<i>Seats in Assembly</i>
Social Democrats	...	999,170 (48.8%)	63
Christian Democrats	...	454,202 (22.3%)	29
Socialist Unity	...	505,992 (19.5%)	26
Liberals	...	192,527 ( 9.4%)	12

**COMPOSITION OF LAND GOVERNMENTS<sup>1</sup>**  
(Position at end of July, 1947)

**British Zone**

Hamburg: **SPD**  
Niedersachsen: **SPD**, CDU, NLP, LDP, Z, KPD  
Nordrhein-Westfalen: **CDU**, SPD, Z, KPD  
Schleswig-Holstein: **SPD**

**U.S. Zone**

Bavaria: **CDU**, SPD  
Wuerttemberg-Baden: **LDP**, SPD, CDU  
Hessen: **SPD**, CDU  
Bremen: **SPD**, KPD, Bremen Democratic Party

**French Zone**

Rheinland-Pfalz: **CDU**, SPD, LDP, KPD  
Baden: Not yet formed  
Süd-Württemberg: **CDU**, SPD, LDP

**Russian Zone**

All five Land Governments composed of **SED**, CDU, LDP,  
except Sachsen-Anhalt, where composition is **LDP**, SED, CDU

**Berlin**

**SPD**, CDU, ~~SED~~, LDP

<sup>1</sup> Black type indicates the party of the Prime Minister. Abbreviations: SPD=Social Democratic Party; CDU=Christian Democratic Union (or equivalent party); LDP=Liberal Democratic Party (or equivalent party); SED=Socialist Unity Party; KPD=Communist Party; NLP=Niedersächsische Landespartei (Deutsche Partei); Z=Centre Party.

## BIBLIOGRAPHICAL NOTE

By far the most important source of reference, so far, are official publications.

1. A Monthly Report of the Control Commission (British Element) supplemented by a Monthly Statistical Bulletin (the former on sale at H.M. Stationery Office), gives detailed reports and statistics for the British Zone, and brief reports about the other Zones.

2. The Military Government *Gazette* (eighteen numbers up to date) publishes all legislative measures taken by the Allied Control Council and British Military Government.

3. A critical survey of developments (up to July, 1946), based on comprehensive evidence by senior officials of the British Control Commission, is given in the Second Report from the Select Committee on Estimates appointed by the House of Commons.

4. Most British daily and weekly newspapers have reported fully and accurately on the Allied Military Government, from the Summer of 1945 onwards.

The most easily accessible record of developments in all spheres of Military Government (in particular the political, economic and financial spheres) is through the index of the *Economist*, published half-yearly (with every volume).

5. Contributions on specific aspects of Military Government have been few so far, as they usually presuppose inside experience.

On the structure and function of the Control Council Machinery, see—

A. Whyte, *Quadruplicate Rule in Berlin, International Affairs*, January, 1947,

C. P. Harvey, *National Review*, March, 1947.

For a brief comparative analysis of Military Government, see—

W. Friedmann, *The Fortnightly*, April and May, 1947.

On legal and administrative problems, see—

Ingrams, *Quarterly Review*, April, 1947,

R. Y. Jennings, *British Year Book of International Law*, 1946.

On the regional changes—

R. E. Dickinson, *Germany's Frontiers*, in *World Affairs*, July, 1947.

On the economic position, see—

*The World Today* (Chatham House), July, 1945 (survey of economic structure of Germany).

Pep Broadsheet No. 256 (October, 1946), on the Ruhr and Europe.

*The World Today* (August, 1947) on Germany's part in Europe's Dollar Crisis.

6. Some general aspects of Germany under Military Government are covered by recent books. Among them are—

Russell Hill, *Struggle for Germany*, 1947,

V. Gollancz, *In Darkest Germany*, 1947,

T. Mende, *Europe's Suicide in Germany*, 1947.

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